IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.792 of 2015 (O & M)
Date of Decision: 20.07.2015

Gurwant Singh

........Appellant

Vs.

Punjab National Bank and another ....Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. M. K. Garg, Advocate for the appellant.

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S.S. Saron, J.

CM No.2211-LPA of 2015

The inquiry report dated 18.06.1991 (Annexure A-1) attached with the Civil miscellaneous application is taken on record subject to just exceptions.

Civil miscellaneous application stands disposed of.

LPA No.792 of 2015

The appellant has filed the letters patent appeal against the order dated 02.03.2015 passed by the learned Single Judge whereby the writ petition filed by the Punjab National Bank, Ludhiana (respondent No.1) has been accepted and the award dated 23.01.2009 (Annexure P-3) passed by the learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chandigarh ('Labour Court' - for short) has been set aside.

The appellant-workman was employed with the Punjab National Bank ('Bank' - for short) (respondent No.1) as a Gunman/Guard in the year 1976. Later he was promoted as Cashier-cum-Godown Keeper. He was placed under suspension on

07.02.1990. A charge-sheet was served on him alleging that while working as an Assistant Cashier at Branch Office, Khanna, he received a sum of Rs.2000/- from customer namely one Ram Dayal on 03.02.1990. The said amount was to be deposited by the appellant in the saving fund account of said customer in the Bank. The appellant-workman, however, made an entry of Rs.200/- only in the accounts of the Bank. As such he misappropriated the remaining sum of Rs.1800/-.

The appellant-workman submitted his reply to the charge-sheet on 09.04.1990. The reply was considered and it was not found to be satisfactory. A regular departmental inquiry was, therefore, initiated so as to ascertain the truth of the charges. The appellant in the inquiry proceedings admitted his guilt and prayed for a lenient punishment. The inquiry officer in view of the admission and after conducting an inquiry gave a report on 30.07.1990. It was noticed that during inquiry, the workman had admitted the charge and he prayed for a lenient punishment.

The disciplinary authority on the basis of the inquiry report, issued a show cause notice to the appellant and also provided him an opportunity of personal hearing. However, the disciplinary authority that issued the show cause notice died and the inquiry could not proceed further. Another disciplinary authority, thereafter considered the case and it was dissatisfied with the findings of the inquiry officer being based merely on the admission of the appellant-workman. A fresh and an exhaustive inquiry was ordered by it. An inquiry was then again conducted by another inquiry officer and he gave a report (Annexure A-1) on 18.06.1991, which is the report that has been taken on record by a separate order that has been passed today. The charges against the workman were held to be proved in the said report (Annexure A-1).

The disciplinary authority then issued a show cause notice dated 01.07.1991 to the appellant - workman mentioning the proposed punishment of his dismissal from service. An opportunity of personal hearing was given to him and after hearing him, the disciplinary authority passed an order dated 23.11.1991 dismissing him from service and confirmed the proposed punishment of dismissal from service. The appellant-workman preferred an appeal, which was also dismissed. The workman then raised an industrial dispute.

The Government of India vide notification dated 09.09.2004 referred the dispute raised by the appellant - workman for adjudication to the learned Labour Court (respondent No.2). The reference was to the following effect:-

> "Whether the action of the management of the Punjab National Bank, Ludhiana in dismissing Shri Gurwant Singh, Ex.Asst. Cashier from service with effect from 25.11.1991 from the Punjab National Bank, Branch Khanna on the allegation of misappropriation of Rs.1800/- is illegal and unjustified? If so, to what relief the concerned workman is entitled to and from which date?"

The learned Labour Court (respondent No.2) in its award dated 23.01.2009 (Annexure P-3) considered the case and noticed the contentions of the appellant-workman, which were to the effect that on getting information of the serious illness of his mother on 03.02.1990, he had to leave office during working hours. He hurriedly calculated the amount and handed the same to a fellow colleague of the Bank. When he rushed home, he found that his mother had a serious paralytic attack. According to the appellant-workman there was no shortage of any amount that was deposited but there had been miscalculation due to the hurried manner in which the amount was handed over. The shortage of the amount was due to miscalculation and it had been made good on that very day. He also submitted that he had not done this intentionally with a view to misappropriate an amount of Rs.1800/-. Besides, throughout his career he had worked honestly and had returned Rs.5000/- to the Manager of the Bank which was deposited in excess by an unknown customer. The said amount was still lying in the suspense account of the Bank.

The workman urged two circumstances in support of his case i.e. the previous inquiry was conducted summarily on the basis of his admission made on 19.04.1990 and the inquiry officer gave a finding on his mere admission. The same showed that the inquiry officer was satisfied about the act to be a mistake on his part and not a serious misconduct. The subsequent disciplinary authority, however, was not satisfied with the findings of the inquiry officer based on conditional admission. Therefore, a full fledged inquiry was ordered. The second circumstance that was urged was that the inquiry officer had ignored the fact that the workman while working on the receipt counter had received Rs.5000/- in excess from an unknown customer of the Bank. The same was returned to the

Manager, which was lying in the suspense account of the Bank. The said contention of the workman had remained un-rebutted and was, therefore, liable to be relied upon. It was submitted that the said two circumstances and the other circumstances cumulatively proved that it was only a mistake on the part of the workman and not a misappropriation of money.

The learned Labour Court (respondent No.2) on consideration of the matter recorded that on perusal of the pleadings of the parties, it was evident that the workman allegedly misappropriated the Bank's funds to the tune of Rs.1800/- on 03.02.1990. It was further mentioned that the workman was charge-sheeted on 16.03.1990 and he submitted his reply to the charge-sheet. Dissatisfied with the reply of the workman, an inquiry was ordered to be conducted. The inquiry officer after conducting an inquiry gave its inquiry report on 30.07.1990 on the basis of admissions of the workman. During the inquiry, the workman admitted the charges and prayed for lenient punishment. It was further observed by the inquiry officer that on perusal of the material on record it was proved that on second inquiry, the inquiry officer adopted a reasonable and a fair procedure for conducting the inquiry and also afforded every possible opportunity of being heard to both the parties. There was a difference in conducting a fair inquiry and the decision making of the inquiry officer on the basis of materials on record. It was, however, also observed that there may be cases where the inquiry might have been conducted in a very fair and reasonable manner, but the decision making which was an adjudicatory process was questioned. In a fair inquiry, the evidence was adduced by the parties as per the procedure laid down and in accordance with the principles of natural justice, whereas, the findings were based on the evaluation of the evidence by the inquiry officer. Therefore, the learned Labour Court (respondent No.2) mentioned that it was not inclined to accept the contention of the learned counsel for the Management Bank (respondent No.1) that once the inquiry was held to be conducted in a fair and reasonable manner, the chapter was closed and the only opportunity available to the workman was hearing on the quantum of the punishment.

A perusal of the above shows that the learned Labour Court accepts at one stage that the inquiry officer adopted a reasonable and fair procedure for conducting the inquiry against the appellant and also afforded every possible opportunity of being heard to both the parties. Thereafter, it erroneously proceeded in going into the question as to whether there had been misappropriation. It was said that there was a difference in misappropriation of money and act done by mistake. For the misappropriation of money, the intention to use the money of the Bank for personal use by the employee was stated to be an essential ingredient and if it was lacking, it would amount to a mistake on the part of the employee. The parameters whether a particular act was a mistake or misappropriation of money was whether a man of prudence would act in the same manner in similar circumstances as the workman had acted. It was held that the inquiry officer had not considered the plea of the appellant-workman that due to the sudden information of serious illness of his mother, he had to hurriedly rush to his house. It was said that it was not in question that his mother was not seriously ill. Besides, there was a miswriting in the long book only and in the rest of the documents, all the entries were correct and the cumulative effect of these facts showed that a man of prudence in similar circumstances could have acted in the same manner as the workman had.

In the opinion of the learned Labour Court it was only a mistake on the part of the workman, which mistake was due to his getting sudden information regarding the serious illness of his mother; besides, on that very day, without delay he had made the amount good without any laches on his part. Two circumstances were noticed by the learned Labour Court in the support of the contention of the workman i.e. firstly, the previous inquiry was summarily conducted on the basis of conditional admission of the workman dated 19.04.1990 that his case be decided under Para 19.12 (e) of the First Bipartite Settlement. On this condition, the inquiry officer gave a finding just on the admission of the workman. The said circumstance according to the learned Labour Court showed that the inquiry officer was also satisfied about the act to be one of a mistake on the part of the workman and not a serious misconduct. The second circumstance was that the inquiry officer ignored the fact that while working on receipt counter the appellant workman had received Rs.5000/- in excess from some unknown customer of the Bank. The same was returned to the Manager, which was still lying in the suspense account of the Bank. This contention of the workman, it was observed, had remained unrebutted and was liable to be relied upon. The said two circumstances and other circumstances it was held by the learned Labour Court cumulatively proved that it was only a mistake on the part of the appellant workman and not a misappropriation of money and there was no intention of misappropriation, which was not reflected. The punishment of dismissal from service awarded by the disciplinary authority and approved by the appellate authority was substituted by the learned Labour Court with punishment of stoppage of two increments with cumulative effect for the year in question and the succeeding year. The Bank was directed to reinstate the workman within one month from the date of publication of the award; besides, he was held entitled to full back wages, continuity of service and seniority.

The Bank aggrieved against the award of the learned Labour Court dated 23.01.2009 (Annexure P-3) filed a writ petition in this Court seeking quashing of the said award dated 23.01.2009. It was submitted that the appellant while working as Assistant Cashier at the Branch Office Khanna received Rs.2000/- from Shri Ram Dayal, a customer of the Bank. The amount was to be deposited in his savings fund account No.20851 at the same Branch. The appellant, however, made an entry of Rs.200/- in the Bank's books instead of Rs.2000/-. He misappropriated the remaining amount of Rs.1800/-. For the said alleged gross misconduct, the appellant was placed under suspension on 07.02.1990 and was subsequently served with a charge-sheet dated 16.03.1990. He submitted his reply to the charge-sheet on 19.04.1990 which was not found satisfactory by the disciplinary authority. As such in terms of order dated 08.05.1990/ 02.08.1990, the disciplinary authority ordered an inquiry to look into the truth of the allegations made against him. An inquiry was conducted in accordance with the provisions of the Bipartite Settlement. The appellant was afforded full opportunity to present his case. A report dated 18.06.1991 was submitted by the inquiry officer holding all the charges to be proved against him. Thereafter, a show cause notice dated 01.07.1991 was issued with the proposed punishment of 'dismissal without notice'. A date for personal hearing of the appellant workman was fixed on 15.07.1991. A copy of the inquiry report was also forwarded to the appellant. At the said stage, unfortunately the disciplinary authority died. The subsequent disciplinary authority afforded personal hearing to the appellant on 13.11.1991. The disciplinary authority after considering the entire material on record, the submissions made on behalf of the appellant and the gravity of allegations proved against him passed a final order dated 23.11.1991 confirming the punishment of 'dismissal without notice'. The appellant aggrieved against the said punishment raised an industrial dispute, which was referred to the learned Labour Court, which had passed the impugned order.

The learned Single Judge in its impugned order dated 02.03.2015 observed that a perusal of the impugned award would reveal that the learned Labour Court had recorded a finding that the inquiry officer appointed by the Bank to go into the charge of alleged misappropriation of Rs.1800/- by the workman while serving as Assistant Cashier had adopted a reasonable and a fair procedure for conducting the inquiry and also afforded every possible opportunity of being heard to both the parties. It was further held that clearly in terms of the reference made, the learned Labour Court having held the inquiry conducted against the workman to be fair and proper pertaining to the allegation of misappropriation of Rs.1800/- and the findings of the inquiry officer having been returned against the employee, the issue that fell for consideration was as to whether the action of the Management in imposing the extreme penalty of dismissal was valid and justified. It was noticed that it was only the learned Labour Court forming a view that the punishment of dismissal against the proven allegation of misappropriation of funds to be unjustified that it could proceed further and examine the aspect of grant of appropriate relief. It was observed that the the present case demonstrated that the learned Labour Court had adopted a novel approach inasmuch as while answering the reference and while exercising discretion under Section 11-A of the Act it had vested in itself even the jurisdiction of converting the findings recorded by the inquiry officer against the workman from that of misappropriation of funds to that of a bona fide mistake.

The observations of the learned Labour Court were noticed by the learned Single Judge to the effect that the inquiry officer was not justified by ordering that the misappropriation of the amount was proved. These were held to be perverse findings which were liable to the set aside. The findings that it was a mistake on the part of the workman and he should have been punished only for such mistake and not for the misappropriation of the amount under the provisions of the Bipartite Settlement for minor punishments, were set aside.

The learned Single Judge further noticed that concededly regular departmental proceedings were initiated against the workman of having received Rs.2000/- from a client for deposit in a saving bank account and only Rs.200/- were entered and reflected in the relevant account books. The balance amount of Rs.1800/- was stated to have been pocketed. It was such article of charge which was subject matter of the inquiry and findings were returned against the workman.

The learned Labour Court having recorded a finding and having held the inquiry to be fair and proper, it was said by the learned Single Judge that it could not have ventured forth in a manner so as to scale down the gravity of the mis-conduct by terming the same to be not misappropriation but only a bona fide mistake and thereby make out a case for exercise of discretion under Section 11-A of the Act so as to substitute the penalty of dismissal with a lesser punishment. It was also held that apart from holding that the learned Labour Court had gone beyond the terms of reference, even the finding recorded as regards it not being a case of mis-appropriation but only a mistake on the part of the workman was wholly whimsical. In relation to the allegation of having collected Rs.2,000/- from a client and having reflected only Rs.200/- in the Bank accounts, the learned Labour Court observed:-

> "There is mis-writing in long book only. In rest of the documents, all the entries are correct."

It was noticed that no reference had been made by the learned Labour Court to any documents that may have been adduced in evidence in support of such observation. Even during the course of hearing before the learned Single Judge, a specific query was put to learned counsel for respondent No.2-workman (now appellant) who had very fairly conceded that there was no such evidence on record. Reliance was placed on the judgment of Hon'ble the Supreme Court in U.B. Gadhe and others v. G.M. Gujarat Ambuja Cement Pvt. Ltd., (2007) 13 SCC 634 wherein it was observed that when the Labour Court found that the workmen in the said case had proceeded on illegal strike and that they were leading participant in such strike, the Labour Court ought not to have interfered with the quantum of punishment especially when it was established that the employer was a public utility service and that the strike prolonged for a period of four to five months. Even in the absence of any further proof of involvement of the workmen for other misconduct of unruly behaviour, abusing superior officers, preventing officers from entering the premises, preventing co-workers from resuming duties and threatening the family members of the workmen and collecting union subscription illegally, it was doubtful whether the Labour Court could have reduced the punishment and substituted the order of dismissal for lesser punishment.

Reliance was also placed by the learned Single Judge on Mahindra and Mahindra Limited v. N.B. Narawade, (2005) 3 SCC 134 where in it was held that it was no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion was vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned was found guilty of misconduct. The said area of discretion had been very well defined by the various judgments of the Supreme Court which were referred to and it was certainly not unlimited as had been observed by the Division Bench of the High Court. The discretion which could be exercised under Section 11-A, it was said, was available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court it was said could not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

A further reference was made to Uttar Pradesh State Road Transport Corporation v. Nanhe Lal Kushwaha, (2009) 8 SCC 772. In the said case, the respondent therein was charged for carrying passengers without tickets on various dates. A disciplinary proceeding was initiated against him in which he was found guilty of the charges levelled against him. He was removed from service by the appointing authority. An industrial dispute was raised by him. The learned Labour Court directed his reinstatement in service with 75 per cent back wages. It was held by the learned Labour Court that the workman concerned with the dispute was fully guilty for the misconduct committed on two dates but he was not guilty for the misconduct committed on four other dates. Accordingly, it was held that the punishment imposed was excessive considering the seriousness of the charges. The order of punishment was amended and the Management was directed to reinstate him from the date of removal from service with continuity of service. Since two charges had been found proved against him, hence the Management was directed that it would pay 75 per cent of wages and other wages; besides, other benefits to him during the period of unemployment. The Hon'ble High Court in view of the fact that the workman was reinstated in service under an interim order passed by it and had retired from service, directed that the award of the Labour Court shall stand modified to the extent that no back wages shall be payable to the workman concerned but he be given continuity of service for the purpose of retiral benefits. It was contended on behalf of the appellant Management that the Labour Court had found the workman guilty of carrying passengers without tickets on two occasions. Hon'ble the Supreme Court held that it was well settled that the Industrial Tribunal or Labour Court may interfere with the quantum of punishment awarded by an employer in exercise of its power under Section 11-A of the Industrial Dispute Act, 1947 but ordinarily the discretion exercised by the employer should not be interfered with. Reliance was placed by the Supreme Court on its earlier decision in U.P. SRTC v. Hoti Lal, (2003) 3 SCC 605 wherein it was opined that it was the responsibility of the bus conductors to collect the fares from the passengers and deposit the same with the Corporation. They act in a fiduciary capacity and it would be a gross misconduct if they do not collect any fare or the correct amount of fare. It was also held therein that it had been highlighted in several cases that the scope for interference with the quantum of punishment was very limited and restricted to exceptional cases

It is, therefore, quite evident that interference with the quantum of punishment is to be done in exceptional circumstances.

Learned counsel for the appellant has submitted that there is evidence on record in the shape of other entries i.e. voucher (Ex.P-3) and cash book (Ex.P-5) at the time of closing the account. It may, however, be noticed that the inquiry officer has considered this aspect in its inquiry report dated 18.06.1991 (Annexure A-1). Shri B. R. Narang (PW-1) appearing for the Bank stated that he was working at Branch Office, Khanna upto April, 1990 and he was In-charge of routine. He was joint custodian of cash with the Head Cashier. He stated that here was a difference of Rs.1800 in the cash on 03.02.1990, which was brought to his notice by Mr. N.K. Munjal, A.M.I/Cash Book (PW-2). The difference was located on 03.02.1990 by observing cash voucher which was filled for Rs.2000/- but had been entered as Rs.200/- by Gurwant Singh (appellant) in the long book (Ex. P-4). He confirmed (Ex.P-3) in the inquiry proceedings and stated that the voucher was for Rs.2000/- and entry in the long book was for Rs.200/-. The voucher was bearing Serial No.7. When the difference of Rs.1800/- came to light, the appellant had left the office before time and he handed over Rs.20,00,18.10p to the Head Cashier Shri Surinder Singh but as per the cash book (Ex. P-5), Gurwant Singh (appellant) had received Rs.201818.10p. When the shortage of Rs.1800/- came to light, Gurwant Singh (appellant) had left the office at that time. Shri I.J. Ahuja, the then Senior Manager deputed other officials to call him from his residence at village Jatana. He came to office at about 4.30 pm and cash amounting to Rs.1800/- brought by him was deposited with the Head Cashier in his presence and entry against Serial No.7 in the long book (Ex.P-4) was corrected as Rs.2000/- in place of Rs.200/-. The total amount of Rs.200018.10 was corrected to Rs.201818.10 under initials of the appellant. In terms of the inquiry report dated 18.06.1991 (Annexure A1) that has been taken on record, the inquiry officer recorded his findings as follows:-

> "I have considered all the evidence brought on record, both by the P.O. and the defence and after analysis of the same, I conclude that the charge-sheeted employee had misappropriated Rs.1800/- on 03.02.1990 as alleged in the charge-sheet. My conclusion is based on the following facts.
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> 1. Mr. Gurwant Singh was working on cashier receipt seat on 03.02.1990.
> 2. He received voucher No.7 with detail for Rs.2000/- and altered his stamp indicating amount of Rs.2000/- on the voucher.
> 3. The same amount of Rs.2000/- has been entered in the cash book (Ex.P-5).
> 4. Oral evidences of S/Shri B.R. Narang, N.K. Munjan, Surrinder Singh, Gurmail Singh, Mohinder Singh, R. S. Kalia have deposed that Rs.1800/- were brought by Mr. Gurwant Singh and deposited with the head cashier to make up the shortage, detected in his receipt

long book.

5. Rs.1800/- deposited by Mr. Gurwant Singh is a clear evidence to show that there was a shortage of Rs.1800/- in the cash on 03.02.1990.

Further I have not touched Ex.D-3, D-4, D-5, D-6 because I do not attach any value from the defence point of view.

In the end I hold the charges as true against Sh. Gurwant Singh, cashier/G.Keept (U/s) B.O. Khanna."

The stand of the appellant that his mother was unwell and, therefore, he left the office is not substantiated by any material on record. No material whatsoever has been shown or placed on record by the appellant with regard to the ailment of his mother. The learned Labour Court on mere surmises held that there was no shortage but miscalculation, which was made hurriedly due to the illness of his mother and was made good on that very day. It also wrongly held that it was not in question that his mother was not seriously ill. In fact it is the appellant who had raised the contention of his mother being seriously ill; therefore, it was for him to prove and establish the fact of her illness. He did not place any material on record to show the illness of his mother. Rather in the initial inquiry that was conducted he admitted his guilt and prayed for a lenient punishment. The said admission was the best evidence that the Bank could rely upon and though it may not be conclusive was nevertheless decisive of the matter. The shortage of cash also is not only in the actual amount of cash but also in the long book (Ex.P-4). The customer had deposited Rs.2000/- but the appellant had entered Rs.200/- in the long book (Ex.P-4); besides, as there was shortage of Rs.1800/- that the appellant had been called from home and he deposited the same.

The appellant in the departmental proceedings had also urged the contention that in an earlier occasion while he was working on receipt counter, he received a sum of Rs.5000/- in excess from an unknown customer of the Bank, which he returned to the Manager of the Bank and was lying in the suspense account of the Bank. The learned Labour Court held that the said contention of the workman had remained un-rebutted and capable to be relied upon. This in fact would not be the correct position as such a contention which was urged by the appellant-workman was also liable to be proved and established on record by leading evidence in support of the same. It is even otherwise not clear as to when the said amount was received by the appellant while working on the receipt counter and whether it was indeed actually received. His mere *ipsie dixit* that he had deposited the amount would not operate as a proof of establishing the said fact. The said past conduct, if any, was liable to be set up as a defence and proved; besides, in any case it was desirable to at least show the necessary particulars in support thereof. Merely because it was stated by the appellant-workman that he had deposited a sum of Rs.5000/- received from an unknown customer of the Bank with the Manager, in the absence of any particular inputs; besides, the period of time when it so happened and also its ultimate outcome, it would by itself not be such a circumstance to give any advantage to him. In any case, in case of misconduct of grave nature, the disciplinary authority may take into consideration the nature of employment and the capacity in which the employee was serving and his duties.

The appellant was an employee of the Bank and working as a cashier in a fiduciary capacity. He was holding a position of trust while working with the Bank. His misconduct was held to be proved against him. There was no material to hold that he had gone to attend his ailing mother on the date when the embezzlement had been committed. Besides, except for the bald assertion of the workman that he he had deposited Rs.5000/- received from an unknown customer with the Manager of the Bank, there is no other material to substantiate the same. The learned Single Judge, in the circumstances, rightly recorded that the workman was working on the post of Assistant Cashier in the Bank and was dealing with public funds. Even a solitary instance of defalcation of public money would result in loss of confidence and would justify the extreme penalty of dismissal from service. The learned Single Judge rightly concluded the case to be of misappropriation and allowed the appeal.

In the circumstances, no ground is made out for interfering with the reasoned judgment of the learned Single Judge and the appeal is accordingly dismissed.

(S. S. Saron)
Judge

20.07.2015 (Ramendra Jain)
A.Kaundal Judge