

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

Reserved on: 11th March, 2015
Date of Decision: 23rd April, 2015

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+ W.P.(C) 122/2009

UNION BANK OF INDIA

..... Petitioner

Through: Mr. O.P. Gaggar, Advocate.

versus

BHARAT BHUSHAN

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner has impugned the award dated 18.07.2008 passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (hereinafter referred to as 'CILC') in I.D. No.57/1997 whereby the punishment of 'stoppage of one increment with cumulative effect' imposed by the management of Union Bank of India on the respondent was modified to the 'stoppage of one increment for one year only' (non-cumulative).

2. Succinctly stating the case of the petitioner is that the respondent was working as a clerk-cum-cashier in the petitioner bank and at the relevant time, he was posted in Nayaganj Branch at Ghaziabad of the petitioner Bank. On 18.03.1998, when the respondent was working as a scroll clerk (one who has to enter the particulars of the depositors in a scroll register and put the scroll number on the pay-in slip), one

customer of the Bank namely Mr. Kirpal Singh came to deposit a sum of Rs.7,100/- in his saving account. The respondent who was assigned with the duty of entering the particulars of the depositors in scroll register and put the scroll number on the pay-in slip, filled up the pay-in slip for the customer and gave him the scroll number of the same but did not scroll the same in the scroll register. The said customer deposited the money with the cashier who gave him stamped receipt on the counter foil and posted the entry in his passbook but did not deposit the amount in the account of the said person. When the said fraud was detected, the respondent was requested by the account holder for reconciliation of the passbook with the ledger. When the amount did not tally, instead of bringing the matter to the notice of the Branch Manager, the respondent took the account holder to the ground floor of the branch and offered him Rs.7,100/- and advised him not to complain to Branch Manager thereby colluding with the cashier Mr. V.K. Verma in perpetuating the fraud. As the said act, as committed by the respondent, amounted to serious misconduct, the disciplinary authority of the Bank served a charge-sheet [CO:IRD:8144:89/343] dated 22.08.1989 on the respondent.

3. Thereafter, the Disciplinary Authority-cum-Inquiry Officer conducted the inquiry following the principles of natural justice and submitted his initial findings dated 16.02.1990 which was forwarded to the respondent also. In response to the said findings, the respondent submitted its reply vide letter dated 24.02.1990. The Disciplinary Authority-cum-Inquiry Officer also granted an opportunity of personal hearing to the respondent. The matter was finally decided and the order

of punishment in the nature of stoppage of one increment with cumulative effect was imposed vide memorandum No.ENQ:DEL:RR:633/90 dated 27.02.1990.

4. The respondent preferred an appeal to the appellate authority on 16.04.1990 which was finally dismissed by the disciplinary authority vide order No. DP:ZO:LKO:5532/NP dated 12.09.1990 and the punishment imposed by the disciplinary authority was affirmed.

5. Subsequently, the respondent raised an industrial dispute which was referred to the Central Government Industrial Tribunal vide order No. L-12012/76/96-IR-BII dated 09.05.1997. Before the CILC, the parties adduced their witnesses and filed their written arguments finally leading to the passing of the impugned award dated 18.07.2008.

6. Aggrieved by the said award dated 18.07.2008, petitioner has preferred the present petition.

7. Nobody appeared on behalf of respondent despite service of notice and he was proceeded ex-parte on 25.02.2010. Even thereafter none appeared on behalf of respondent. On 11.03.2015, it was ordered that the respondent is at liberty to file written synopsis within one week, but the respondent chose not to file the same.

8. Learned counsel for the petitioner contended that CILC passed an award without going into any of the contentions raised by petitioner Bank. In spite of the Bank having produced all the records of the inquiry proceedings before the CILC, the Tribunal chose to make references to points which were never in contention between the

parties. The CILC had itself recorded that the negligence of the respondent was proved in the domestic inquiry. In such state of affairs, the Tribunal was not justified in changing the punishment on the alleged observation that the act was a mere negligent act without any monetary loss to the Bank when the proved facts go to show that the respondent had connived with the cashier in defrauding the customer of the bank. Once the CILC has come to a conclusion that the workman is guilty of negligence in performing his duties, then, it could not assign grades to the said negligence and change the punishment. The payment of the amount back to the defrauded customer by the respondent shall not make the case as that of a mere negligence rather, the act committed by the respondent amounts to a serious misconduct.

9. It was further contended on behalf of petitioner that in case the punishment in the inquiry proceedings has to be set aside or changed under the Industrial Disputes Act, 1947 (for short, 'ID Act') then, the proper course for the same is to first set aside the inquiry proceedings and replace the same by fresh inquiry by granting opportunity to the parties to prove their respective cases, however, nothing of this sort was done in the present case. The charge of embezzlement is not necessary for proving a fraud which otherwise also stands proved in the present case, though, the respondent has saved himself by paying the loss to the customer. The punishment was imposed on the respondent for the fraud perpetrated by the workman in connivance with another employee and was not imposed for the reason of not maintaining the accounts properly.

10. It was lastly contended by the counsel for the petitioner that the actual loss to the bank is not the criteria to be looked at to establish misconduct. A bank deals with the public money and the entire system runs on the faith of the customers in the bank. In such a case, any actual or apparent misconduct by the employee has an effect of lowering the bank in the estimation of the customer and is at the same time deleterious to the business of the bank which runs entirely on the faith of the depositors. In such a case, the initial punishment imposed on the workman commensurate with the misconduct committed by him.

11. I have given my thoughtful consideration to the submissions made by learned counsel for the petitioner and have also perused the material on record.

12. At the outset it would be pertinent to discuss the meaning of the expression, 'withholding of increment with cumulative effect'. What is meant by this expression is that the increments earned by an incumbent are cut off as a measure of penalty forever in his upward march for earning higher scale of pay. The clock is put back to a lower stage in the time scale of pay and on expiry of the punishment period, the clock would start working from that stage afresh and, therefore, the effect of stoppage of increment with cumulative effect is that the employee is reduced in his time scale of pay for the period in question and it is in perpetuity during the rest of his tenure of service. As the increments that would have earned for those years would not be counted in the time scale of pay as a measure of penalty.

13. In '**Punjab State v. Ram Lubhaya**', 1983(2) SLR 410 , the distinction between withholding increment simpliciter, i.e., without cumulative effect and withholding the increment with cumulative effect was described and it was observed as under:-

“6. Before proceeding further, it will have to be understood as to what is the effect of withholding of increments simpliciter, i.e. without cumulative effect, and with cumulative effect. For example if an employee is getting Rs.100 at the time of imposition of penalty of withholding of increments, and the penalty is without cumulative effect for a period of two years and the annual increments were to be of Rs.5, then in that case for two years he will continue to get Rs.100 per month but after the expiry of two years, he will get at the time of next increment, Rs.115 including the increments for the past two years during which period they remained withheld. In case of withholding of increments for two years with cumulative effect, the employee will get Rs.100 for two years and at the third increment, he would get Rs.105 and not Rs.115. While in the first case there will be a loss of increments for two years only and no further loss thereafter till retirement, but in the second eventuality due to loss of two increments there will be loss of pay for whole of the remaining tenure of the employee which will affect his pension on his retirement. Therefore, two penalties would be clearly distinct having different consequences.”

14. As can be seen from above that the consequences that ensue from the said two punishments are variable. In the case where the increment is stopped with cumulative effect, a person is permanently deprived of the benefit which he would have got had the said punishment never been imposed on him. On the other hand, in the case

where the increment is withheld without a cumulative effect, the increments are earned by the incumbent, though, eventually and together. Clearly, the consequences resulting from the former punishment are grave in nature restricting its imposition in appropriate cases considering the gravity and seriousness of the misconduct committed by a person.

15. Under the ID Act, 1947 the Labour Court, Tribunal and National Tribunals have been invested with a power under Section 11A thereof to give appropriate relief in the cases of discharge or dismissal of workman. Under Section 11A of ID Act, the Labour Court, Tribunal and National Tribunal, on satisfaction that the order of discharge or dismissal was not justified, may by its award set aside the said order and may direct reinstatement of workman or any other relief. Section 11A ID Act reads as under: -

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal,

as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

16. Section 11A of the ID Act deals exclusively with the cases where the question of discharge or dismissal of workman is brought before the Labour Court/ Industrial Tribunal. Prior to incorporation of Section 11A, Labour Court/ Tribunal was guided by judicial pronouncements and interfered with the punishments irrespective of their nature but the situation took turn by the Apex Court’s decision in ‘**Indian Iron and Steel Co. Ltd. vs. Their Workman**’, (*AIR 1958 SC 130*), limiting the jurisdiction in Section 11A of the ID Act to cases; (i) when there is want of good faith; (ii) when there is victimization or unfair labour practice; (iii) when the Management has been guilty of basic error or violation of principles of natural justice, and (iv) when on the materials, the finding is completely baseless or perverse.

17. The scope of Section 11A of the ID Act was again discussed by the Hon’ble Supreme Court in ‘**Life Insurance Corporation of India v. R. Suresh**’, (*2008*) *11 SCC 319* and it was observed as under:-

“31. An Industrial Court in terms of Section 11A of the Act exercises a discretionary jurisdiction. Indisputably, discretion must be exercised judiciously. It cannot be based on whims or caprice.

32. Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be a relevant factor. A

misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases, even the doctrine of proportionality may be invoked.”

18. Having said that, a Labour Court or Industrial Tribunal is still not deprived of its power to deal with the kind of cases where punishment other than discharge or dismissal is awarded to the workman. Item No.1 of II Schedule and Item No.8 of the III Schedule appended to the ID Act comprehend within themselves all matters in which the orders are passed by the employer under the standing orders and the rules of discipline. This would obviously include imposition of punishment other than dismissal or removal from service and the Labour Court/ Industrial Tribunal has got full jurisdiction to examine the merits and de-merits of the order of punishment passed by the employer under the standing orders and rules of discipline where the penalty is other than dismissal or discharge from service. Although, such power does not emanate from Section 11A of the ID Act, such jurisdiction is exercised in conformity with the II and III Schedule of the ID Act.

19. As to what is the extent of interference in cases of other punishment, the Apex Court does not opine so in **Indian Iron and Steel Company's** case (supra). However, the Labour Court/ Industrial Tribunal can interfere to the extent permitted by judicial pronouncements and facts of individual case. Some of the considerations can be; (i) want of good faith; (ii) victimization or unfair labour practice; (iii) basic error or violation of principles of

natural justice; (iv) finding completely baseless or perverse; (v) colourable exercise of power or want of bonafide; (vi) bonafide. Punishment shocking disproportionate in the facts of the present case; and (vii) conduct of workman/ workmen, present or past.

20. Now reverting back to the facts of the present case, it is seen that the respondent workman was charged vide charge-sheet No.CO:IRD:8144:89/343 dated 22.08.1989 (Ex. M-2) under the charges;

“Gross Misconducts:

- (1) Doing act prejudicial to the interest of the bank;
- (2) Negligence, likely to involve the bank in monetary loss;

Minor Misconducts:

- (1) Breach of rules of business of the bank;
- (2) Negligence while performing his duties.”

21. For the charges falling under the head of gross misconduct the respondent was awarded the punishment of ‘stoppage of his next one annual increment with cumulative effect, which will have the effect of postponing his future increments’ while for the charges falling under the head of minor misconduct, the respondent was awarded a punishment of ‘warning’. The learned Trial Court has come to the conclusion that the charge of negligence stands established against the respondent on the basis of documentary evidence adduced before the inquiry officer. From a perusal of the said records, especially the scroll record of 18th March, 1988 (Ex. M-3), pay-in slip for Rs.7,000/- dated

18.03.1988 (Ex. M-4) and Kirpal Singh's passbook's entry (Ex. M-5), this Court observes that the entry of said Rs.7100/- as deposited by the complainant Kirpal Singh is missing from the entry scroll record of 18th March, 1988 (Ex. M-3). On the said findings, the Trial Court had reached the conclusion that the sentence awarded to the respondent was disproportionate to the charge of 'negligence' as proved against him. The trial court has also rightly observed that the respondent was never charged with embezzlement. However, it is pertinent to note that at the stage of reaching such conclusion the trial court has not given any finding on the charge, 'doing act prejudicial to the interest of the bank' under the head of gross misconduct.

22. From a perusal of the initial finding of the inquiry officer dated 16.02.1990 that formed the basis of the final inquiry report dated 27.02.1990 imposing the said penalties on the respondent, it is observed that the inquiry officer had reached on a conclusion that some sort of collusion existed between the cashier Mr. Verma and the present respondent in misappropriating the money deposited by the complainant. The said officer had also at several places talked of the fraud committed by the respondent alongwith said Mr. Verma.

23. However what is worth mentioning at this point is that to establish the fraud or collusion, the inquiry officer had relied solely on the testimony of one Mr. V.P. Singh. Mr. V. P. Singh has, in turn based his testimony on the complaint filed by Kirpal Singh. It is also pertinent to mention here that although the complaint dated 21.10.1998 of Mr. Kirpal Singh, (Ex. M-7) was proved before the inquiry officer,

the said complainant was not produced as a witness either before the inquiry officer or before the Labour Court. Under such circumstances, the conclusion regarding fraud as reached by the inquiry officer does not appeal to the conscience of this court. In any case, the respondent was never charged with fraud or embezzlement as observed above.

24. This court is also conscious of the fact that to determine the quantum of punishment imposed on a bank employee, loss of trust in such an employee is an important consideration. The learned counsel for the petitioner has brought to the notice of the court, the judgement of the Hon'ble Supreme Court in '**State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya**', (2011) 4 SCC 584, wherein it was observed that to determine whether the punishment awarded to a bank employee is shockingly excessive or disproportionate to the gravity of proved misconduct, loss of confidence in the employee is a relevant factor. It was observed as under: -

“8. When a court is considering whether the punishment of “termination from service” imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from “dormant” to “operative” category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in

effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be the account-holder was an impostor, the bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.”

25. As aforementioned, the respondent was also charged with doing an act prejudicial to the interest of the bank. However, the evidence produced against him is insufficient to establish how the act committed by the respondent resulted in prejudice to bank's interest. From the material on record, the only charge that is established against the respondent is that of negligence.

26. Even at the cost of repetition, it is important to mention that the Labour Court has not given any finding with regard to the charge, 'doing act prejudicial to the interest of the bank' and acted as if there was only a charge of negligence against the respondent. Despite this, the conclusion arrived at by the learned Labour Court cannot be faulted with. As already observed, the punishment of stoppage of increment with cumulative effect amounts to a grave penalty. Further, the trial court is empowered to reduce the sentence, if it finds it to be a disproportionate to the charges proved against a workman. Thus, the impugned order of the trial court is correct to the extent that it reduces the sentence of the respondent from stoppage of one due increment with cumulative effect to stoppage of one due increment without cumulative effect though deficit in terms of findings on the charge of

‘act prejudicial to interest of bank missing in it’ on which I have already observed on the basis of the material on record is not established.

27. For the reasons recorded above, the petition is devoid of any merit and the same is hereby dismissed.

28. Trial court record be sent back forthwith.

(VED PRAKASH VAISH)
JUDGE

APRIL 23rd, 2015
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