

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2826 OF 2006**

Corporation Bank

...Petitioner

vs.

The General Secretary & Anr.

....Respondents

Mr.Anand R. Pai with Ms.Radha Ved I/b. Sanjay Udeshi & Co. for Petitioner.
Mr.P.N. Anaokar for Respondent.

CORAM : S.C. GUPTE, J.**17 MARCH 2016****P.C. :**

The writ petition impugns Part-I award dated 24 October 2001 and Part-II award dated 3 May 2006 passed by the Central Government Industrial Tribunal in a reference under the Industrial Disputes Act, namely, Reference (IDA) 2/60 of 1999.

2 The Petitioner is a Nationalised bank. Respondent No.2 was working with the Petitioner as a Typist-cum-Clerk since 16 June 1980 and was posted at the relevant time at the Margao Branch at Goa. There was some disciplinary proceedings against Respondent No.2 in 1986, which resulted into infliction of the penalty of dismissal upon him. In terms of the settlement, however, between the parties on 7 June 1988, Respondent No.2 was reinstated by the Petitioner bank. It is the case of the Petitioner that after his reinstatement, Respondent No.2 started addressing anonymous letters by adopting a pseudo name of H.R. Shenoy to various authorities of Reserve Bank of India, Officials of Central Government, etc. A domestic enquiry was thereupon held against him after issuing a charge-sheet. In his report dated 15 October 1990, the Enquiry Officer gave a benefit of doubt to Respondent No.2 and the departmental proceedings were dropped by the Petitioner. On 8 July 1991, at the request of Respondent No.2, he was posted back to the Margao branch of the Petitioner where he had started reporting for duty. It is the grievance of the Petitioner that

even after his reinstatement and repositioning at Margao branch, Respondent No.2 persisted in addressing anonymous letters against higher officials of the bank. Once again on 3 June 1996, a charge-sheet was issued against Respondent No.2 for gross misconduct falling under Clause 19.5 of the bipartite settlement dated 19 October 1966. The charge-sheet alleges that various letters, which are set out in the charge-sheet, were addressed by Respondent No.2 to the officials of the bank, Union Ministers and other Central Government functionaries. Despite addressing communications to Respondent No.2, he continued to make representations by submitting letters to the Secretary, Ministry of Finance, Government of India and Director of Vigilance, Government of India, respectively. Respondent No.2 replied the charge-sheet by his letter dated 8 July 1996. The Respondent in his reply admitted that the letters referred to in the charge-sheet were indeed written by him. Respondent No.2, however, pleaded that during those days, he was undergoing severe mental stress and was in a state of mental depression. He claimed that the mental stress and depression could be due to the earlier charge-sheet and suspension, as also subsequent punishment of dismissal inflicted on him in 1986. He submitted that he firmly believed that Shri H.V. Kamat was the root cause of the humiliation inflicted on him. Respondent No.2, in the premises, requested for withdrawal of the charge-sheet, expressing once again regret for having addressed the offending letters, which was said to be the result of mental stress and depression. The Petitioner appointed its Manager of Law, Personnel and Administration Division, as an Enquiry Officer to hold and conduct a departmental enquiry against Respondent No.2. By his report and findings dated 20 February 1997, the Enquiry Officer observed *inter alia* that Respondent No.2 was guilty of misconduct by willful insubordination or disobedience of lawful and reasonable orders of the management or of superiors falling under clause 19.5(e) of the bipartite settlement as well as acts prejudicial to the interest of the bank falling under Clause 19.5(j) of the bipartite settlement. After receipt of the Enquiry Officer's report and findings, by its show cause notice dated 27 February 1997, the disciplinary authority called upon Respondent No.2 to show cause as to why punishment of dismissal should not be imposed upon him. After an opportunity to show cause was afforded to Respondent No.2, by its order dated 21 March 1997,

the disciplinary authority imposed the punishment of dismissal on Respondent No.2. After rejection of the appeal of Respondent No.2 before the appellate authority of the Petitioner bank, Respondent No.2 raised an industrial dispute against the Petitioner bank, claiming reinstatement with full back-wages and continuity of service with effect from 21 March 1997. By an order dated 22 February 1999, the Government of India, Ministry of Labour, referred the dispute for adjudication to Central Government Industrial Tribunal No.2. Respondent No.2 filed his statement of claim and the Petitioner bank filed its written statement opposing the reference. By its Part-I award dated 24 October 2001, the Industrial Tribunal held that the enquiry conducted against Respondent No.2 was vitiated for non-compliance with the principles of natural justice and that the findings of the Enquiry Officer were perverse. The management was, accordingly, allowed to lead evidence to justify its action of dismissal of Respondent No.2. The Petitioner, thereafter, led evidence through its witnesses before the Industrial Tribunal. The witnesses were cross-examined by the representative of Respondent No.2. Respondent No.2 examined himself to oppose the charges. By its order dated 3 May 2006, the Industrial Tribunal declared Part-II award directing the Petitioner to reinstate Respondent No.2 to the post of Typist-cum-clerk by giving benefit of 50% back wages from 21 March 1997 till he was legally entitled to work. Both Part-I and Part-II awards of the Industrial tribunal have been challenged by the Petitioner bank.

3 I have heard learned Counsel for the Petitioner as well as Respondent No.2. The submission of learned Counsel for the Petitioner is that the conclusion drawn by the Industrial Tribunal that there was no direct evidence against Respondent No.2 to show that he was the author of the offending documents, and hence, the charge was not proved, is clearly perverse inasmuch as throughout the enquiry proceedings before the Enquiry Officer, Respondent No.2 never contested having written the letters. He merely explained his conduct in writing the letters as a result of mental stress. Learned Counsel submitted that an adequate opportunity was given to Respondent No.2 to show cause to the charges and after a proper enquiry, the dismissal order was passed. On the other hand, it is submitted by learned Counsel for Respondent No.2 that there was no

proof that the letters were addressed by Respondent No.2. Secondly, he submitted that Respondent No.2 was admittedly cautioned for having addressed the letters and that after such cautioning, he has not addressed any communication to any higher authorities in breach of the service conditions. He submitted that having first been punished by way of issuance of caution, Respondent No.2 could not have been punished once again with an order of dismissal for the same wrong. Learned Counsel also submitted that the witnesses brought by the Petitioner, both before the Enquiry Officer and the Industrial Tribunal, did not witness the writing of the offending letters by Respondent No.2, which was the subject matter of the charge-sheet. He submitted that none of the witnesses proved the fact of Respondent No.2 having addressed the offending communications.

4 The charge against Respondent No.2 was that he addressed several communications to the higher ups in the Government, bypassing the departmental machinery, making frivolous allegations against the officials of the Petitioner bank. The charges, which were examined by the Enquiry Officer and later by the Industrial Tribunal, concerned whether or not the subject communications were addressed by Respondent No.2; Whether the complaints / communications alleging mala fides on the part of various officers of the Petitioner bank were unwarranted or frivolous; and Whether the letters amounted to insubordination and breach of any of the service rules. As far as the factum of addressing the offending communications is concerned, the record clearly establishes that there never was any contest on the part of Respondent No.2. The very first contemporaneous communication addressed by Respondent No.2 to the Petitioner bank dealing with the charge-sheet, namely, his reply to the charge-sheet dated 8 July 1996, unequivocally admits that the communications were all addressed by Respondent No.2. The only defence alluded to by Respondent No.2 was that he was undergoing severe mental stress and was in a state of mental depression. He posited that his mental condition might have been due to the events concerning the earlier charge-sheet issued to him, which resulted into his suspension and subsequent punishment of dismissal. He never offered any other explanation. In fact, paragraph 8 of his reply, which is

categorical and which puts all controversy to rest, may be noted in this behalf.

“ Today I have no other explanation to offer for my conduct except to confess that I was under great mental stress and depression which must have made me do what I have done.”

5 Apart from his reply to the charge-sheet, even if one were to go by the deposition of Respondent No.2 himself before the Industrial Tribunal, it is apparent that Respondent No.2 never questioned the veracity of the allegation that the offending letters were indeed addressed by Respondent No.2. It is also not in dispute that many of these letters were addressed to the higher ups without going through proper channels available to an employee in Central Government service. The only question in that case open before the Enquiry Officer and later before the Industrial court was whether or not the delinquent employee had a psychological justification for addressing the offending communications. As far as the plea of severe mental stress and state of mental depression, there was no material either before the Enquiry Officer or before the Industrial Tribunal to show that Respondent No.2 was indeed undergoing any mental stress or was in a state of mental depression. No documentary or oral evidence is led in this behalf by Respondent No.2. In the face of these circumstances, it was not open to the Industrial court to come to a finding in its Part-II award that there was no direct evidence to involve Respondent No.2 in the matter of offending communications or that he was not the author of the documents. The conclusion is clearly such as no person duly instructed in law could have reasonably arrived at. As held by our court in the case of **Employees State Insurance Corporation vs. A.V. Tungare**¹, once an employee admits to the charges and there was no cogent material to show that the admission of the charges was recorded under duress or by applying force or pressure and that admission was unconditional and in unequivocal terms, even if the Enquiry Officer were to close the enquiry proceedings taking the charge as proved, no fault could be found. In the present case, though the delinquent employee contested the charges, the factual basis of

1 2014 SCC OnLine Bom 360 : (2014) 3 AIR Bom R 625

the charges, namely, his having addressed the offending communications, being clearly and unequivocally admitted and there being no cogent material before the court to show that such admission was under duress or force or pressure, the court was bound to act on the admission.

6 It cannot possibly be suggested that the cautioning of the delinquent employee referred to in the charge sheet was a matter of punishment. It was merely in the form of a communication directed towards the delinquent employee calling upon him to desist from indulging in the offending conduct. Whether the employee persisted in the offending conduct after such caution or otherwise, the action of the employer in prosecuting the departmental proceedings against the delinquent cannot be faulted on the ground of double jeopardy.

7 In the premises, Part-II award of the Industrial Tribunal cannot be sustained. Rule is, accordingly, made absolute by quashing and setting aside Part-II award dated 3 May 2006. Considering, however, that the payment of 50% back-wages was made to Respondent No.2 under an order of the court under Section 17B on account of the award, the Petitioner is directed not to recover the amount paid by the Petitioner to Respondent No.2 so far and treat the same as an ex-gratia payment.

8 The petition is disposed of accordingly.

(S.C. Gupte, J.)