

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(2199)

CWP No. 13105 of 1998 (O&M)

Date of Decision: 24.10.2016

Pardeep Aggarwal

.....petitioner(s)

Versus

Presiding Officer, Labour Court, Rohtak and Another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. P.K. Dutt, Advocate
for the respondent No. 2.

P.B. BAJANTHRI, J. (Oral)

In the present petition, the petitioner has assailed the order passed by the Industrial Tribunal-cum-Labour Court dated 06.11.1997.

2. The petitioner is stated to have been appointed as a Clerk in the respondent-Bank during the month of December, 1983. There were allegations against the petitioner that in order to misappropriate a sum of ₹ 20,000/-, he has manipulated records while calculating interest on FDR which stood in the name of Radha Kishan. The interest amount of ₹ 20,000/- was remitted in excess in M/s Ajanta Furniture and its proprietor is Sh. Radha Kishan. The allegation is that in a non-existing account as on 12.12.1988 by putting antedated a sum of ₹ 20,000/- was credited in the account of M/s Ajanta Furniture. Based on the above allegations, the petitioner was placed under suspension and he was charge-

sheeted in the disciplinary proceedings on 11.02.1989. In the meanwhile, on 18.01.1989, account holder of M/s Ajanta Furniture, who had withdrawn a sum of ₹ 20,000/- remitted back the amount so as to adjust the said amount and to rectify the FDR interest. The petitioner submitted his explanation to the charge memo, even though, he has admitted the mistakes committed by him while getting remitted the interest amount. However, he has denied the charge that in order to misappropriate a sum of ₹ 20,000/-, he has remitted the amount in the M/s Ajanta Furniture. The Inquiring Officer held that the charges were proved. Thereafter, on 01.12.1990, the petitioner was removed from service. He preferred an appeal before the Appellate Authority. Appellate Authority confirm the order of the disciplinary authority on 21.10.1991. The petitioner raised an industrial dispute and reference No. 363 of 1994 was decided by the Labour Court in which the Labour Court framed the following issues, which reads as under: -

“On the pleadings of the parties following issues were framed: -

- 1. As per terms of reference?*
- 2. Whether this Court has no jurisdiction?*
- 3. Whether the enquiry conducted was fair and proper? If not, to what effect?”*

3. The Labour Court while relying on the documents placed before it came to the conclusion that the enquiry initiated is in accordance with law and so also perusal of the records relating to manipulation of the bank account by the petitioner. Thus, the Industrial Tribunal-cum-Labour Court declined to interfere with the reference.

4. Hence, the present petition.

5. Learned counsel for the petitioner submitted that in the disciplinary proceedings as well as before the Labour Court none of the cited witnesses had been examined or cross-examined. In other words, both the disciplinary authority as well as Labour Court relied on documents which were placed by the respondent-Bank came to the conclusion that the charges levelled against the petitioner are proved. It was further contended by the learned counsel for the petitioner that before the Inquiring Officer despite seeking for assistance of an outsider to present case on behalf of the petitioner before the Inquiring Officer was refused. Thereby, principle of natural justice has been violated. It was also contended that the Inquiring Officer's finding do not contain assessment of evidence. Further, it was contended that more than one person are involved in the transaction relating to wrong entry or wrong remittance of a sum of ₹ 20,000/- in the account of M/s Ajanta Furniture. The petitioner alone has been subjected to disciplinary proceedings whereas the seniors to the petitioners and juniors (Clerks) have been left out. Therefore, the disciplinary proceedings initiated and imposition of penalty of removal from service are liable to be set aside. Even the, Labour Court failed to appreciate that none of the cited witnesses were examined, and the Labour Court also failed to examine any witnesses to prove the charges. The Authors of the documents which were placed before the Labour Court have not been examined. Hence, the Labour Court order dated 06.11.1997 is liable to be set aside.

6. Per contra, learned counsel for respondent No. 2 submitted that the petitioner has committed error by remitting a sum of ₹ 20,000/- in the account of M/s Ajanta Furniture. Therefore, question of examination

and cross-examination of the cited witnesses may not be necessary non-examination of the cited witnesses may not be mandatory in the case where the employee has admitted the guilt. The Labour Court has perused the records relating to remittance of ₹ 20,000/- on 12.12.1988 in an account which was non-existing as on that date, namely, M/s Ajanta Furniture. It was further contended that the petitioner manipulated the records and in respect of opening of M/s Ajanta Furniture account in order to misappropriate a sum of ₹ 20,000/-. If the intention of the petitioner is not to misappropriate the sum of ₹ 20,000/-, petitioner would not have been involved in opening of an account in the name of M/s Ajanta Furniture. Therefore, there is no infirmity in the disciplinary proceedings before the Labour Court.

7. Heard learned counsel for the parties.

8. Perusal of the Inquiring Officer's report, it is evident that there is no assessment of evidence. Cited witnesses have not been examined. In fact, the Manager of the Branch was one of the witness, while placing material relating to manipulation of record. The Manager should have been examined and cross-examined in the enquiry both in the inquiring proceedings as well as before the Labour Court. The contention of the respondent-Bank that the petitioner has admitted the guilt is not to the extent that misconduct committed by him for the reasons that what has been admitted is that relating to entries made in the register as well as remitting a sum of ₹ 20,000/- in the account of M/s Ajanta Furniture. He has never admitted that in order to misappropriate a sum of ₹ 20,000/-, he has made entries. When these things stood, it was the bounden duty of the respondent-Bank to prove the charge by leading evidence of the authors of

the cited documents. Even, though three witnesses have been cited in the disciplinary proceedings, they were not summoned to adduce evidence before Inquiring Officer or before the Labour Court. The Inquiring Officer as well as Labour Court held that the charges were proved with reference to documents whereas the authors of the documents have not been examined or cross-examined. Supreme Court in the case of “**S.C. Girotra Vs. United Commercial Bank (Uco Bank) 1995 Supp (3) SCC 212**” held that author of the documents is to be examined.

9. In the present case, even, the FDR holder Sh. Radha Kishan, who has also opened account in the firm, namely, M/s Ajanta Furniture for the reasons that, within two days after remitting a sum of ₹ 20,000/- in the name of M/s Ajanta Furniture, the same has been remitted back when the Manager and the petitioner noticed that there was excess payment made in the account of M/s Ajanta Furniture. In view of these discrepancies, the Labour Court order dated 06.11.1997 is set aside. Consequently, the removal order dated 01.12.1990 is also set aside. The matter is remitted to disciplinary authority to commence the enquiry from the defective stage i.e. examination of witnesses.

10. Learned counsel for the petitioner submitted that the petitioner is aged about 59 years and age of retirement is 60 years. Therefore, the disciplinary authority is directed to complete the inquiry proceedings within a period of three months from the date of receipt of certified copy of this order. The petitioner is directed to cooperate in the disciplinary proceedings. The respondents are liable to pay subsistence allowance for the intervening period from date of dismissal till concluding of disciplinary proceedings in view of the decision rendered in the

**“Managing Director, ECIL, Hyderabad Vs. B. Karunakar 1993 (4) SCC
727.”**

Accordingly, petition stands disposed of.

**(P.B. BAJANTHRI)
JUDGE**

24.10.2016
sahil soni

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No