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

% **Date of decision: 22.04.2016**

+ **LPA 190/2016**

MADAN LAL

..... Appellant

Through: **Mr.Pawan Kumar Bahl, Adv.**

versus

RESERVE BANK OF INDIA & ANR. Respondents

Through: **Mr.Suhail Dutt, Sr.Adv. with
Mr.H.S.Parihar, Mr.Kuldeep Parihar,
Mr.Sankalp Goswami and Mr.Azhar
Alam, Advocates.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.No.10506/2016 (delay in re-filing the appeal)

For the reasons mentioned in the application, the delay in re-filing the appeal is condoned.

Application stands disposed of.

LPA 190/2016

1. The Single Judge – in the order under appeal, upset the decision of the Labour Court, on the preliminary issue framed “*as to whether the findings rendered after the domestic enquiry were vitiated because of failure of natural justice.*”

2. The appellant was chargesheeted for misconduct of allegedly harassing a woman co-employee. The charge sheet was based upon two complaints made by a co-employee (complainant). The complainant was examined in the course of the disciplinary proceedings/enquiry proceeding dated 28.08.2003 in the presence of the appellant. At that time he had a defence representative but did not cross-examine the complainant. On the next date i.e. 10.09.2003 the defence representative withdrew in the light of which the enquiry officer granted an opportunity to the appellant to engage another representative; on 18.09.2003, the appellant stated that he wished to defend himself in person. In these circumstances, further time was granted and on 26.09.2003 when the enquiry was held again, the complainant was recalled and a few questions were put by the enquiry officer to her, which were answered. At that stage, the appellant stated that he did not wish to cross-examine the complainant but rather, that would examine her at the end, after all departmental witnesses had been examined. The enquiry officer declined this request and asked the appellant to cross-examine the complainant. On the next date again at the commencement of proceedings, the appellant was asked to cross-examine the complainant. He did not do so and reiterated his demand that the cross-examination be carried out at the end of the proceedings.

3. The enquiry culminated in the finding of guilt of the appellant and the order of dismissal was made. This became the subject matter

of the reference. The appellant unsuccessfully challenged the dismissal order in an internal appeal to the respondent/Reserve Bank after which he sought to agitate an industrial dispute which is the subject matter of the pending reference before the Labour Court. The Labour Court in its order on the preliminary issue as to the fairness of the enquiry held as follows:

“ It was submitted from the side of the management that the evidence of all the witnesses have been recorded and the workman was given opportunity to cross-examine all the witnesses but he insisted that he would cross-examine the complainant after cross-examining of all the other witnesses. The Inquiry Officer closed the cross-examination of the complainant and examined the other witnesses.

It transpires from perusal of the inquiry proceedings that the examination-in-chief of the complainant has been recorded on two dates. No application has been moved by the Presenting Officer to the effect that something was left in her examination-in-chief. Without permission of the Inquiry Officer hearing of examination-in-chief was recorded on the second date also.

The complainant has not been cross examined by the workman. The Inquiry Officer has given his findings on the examination-in-chief of the complainant and the evidence of the other witnesses.

The domestic inquiry is not an empty formality. The inquiry Officer should have given the opportunity to the workman for cross-examining the complainant. It is true that technicalities of the Evidence Act are not applicable in domestic inquiry but the examination-in-chief of the witnesses who have not been

*cross-examined by the workman is not admissible in evidence.
The inquiry stands vitiated.”*

4. The respondent bank's writ petition was considered by the learned Single Judge who after taking note of the entire record of the proceedings concluded that the ruling on the preliminary issue was unjustified. The appellant urges that facially, the record suggests that he was denied a reasonable opportunity. Learned Counsel contends firstly that the decision of whether a charged employee should be compelled to cross-examine the complainant in a crucial enquiry at a particular stage as to the misconduct into the allegations of sexual harassment, should have been arrived at in a fair manner. It is urged that since the appellant was the alleged delinquent, the choice or exercise of his right to cross-examine all witnesses in a particular order should have been given to him and that no prejudice would have been caused to the management.

5. It is urged that the entire enquiry appeared to be biased and there is reasonable basis for such assertion. In this regard, it is highlighted that the enquiry officer permitted the management, without even an application, to recall the complainant on the adjourned date of hearing to be re-examined. This itself amounted to a travesty of justice and led to prejudice to the appellant.

6. Counsel for the bank relied upon the enquiry record itself which is part of the appeal, and elaborated by stating that at every stage a proper opportunity was given to the appellant to cross-examine the

complainant. Instead of availing of that opportunity he wished to place conditions on the exercise of that opportunity. The enquiry officer was the master of the proceedings and the manner in which he granted opportunities at various stages such as, adjourning as and when the appellant according to him (the enquiry officer) needed time, shows that there was no bias but rather that a fair opportunity was given.

7. This Court has considered the submissions. It is evident that the appellant is making a two-fold argument; first that the denial of opportunity to cross-examine vitiated principles of natural justice and consequently the second one i.e. that a complainant was permitted to be cross-examined even without notice or application.

8. The record of enquiry shows that right from end August to end September, there were five dates of hearing and on the very first date, i.e. on 28.08.2003 the complainant was examined. The defence representative of the appellant sought liberty to cross-examine the complainant after considering the original complaint. At that stage, the enquiry officer stated that original would be available for inspection. Significantly, the appellant never urged that the complainant could not be cross-examined at that stage i.e. soon after her examination in chief. On the next date, the defence representative withdrew and the appellant was granted time to engage a new one. On the third date, i.e. 18.09.2003, the appellant stated that he would conduct the defence himself. On this statement, the enquiry was again adjourned to 26.09.2003. On this date, the complainant was recalled. The court

sees no infirmity in this step because no other witness had been examined by them. What the appellant here urges is that prejudice is caused to him by the lack of a formal application by the bank to re-examine the complainant. Given the nature of the domestic enquiries which are not akin to court proceedings, and considering that no other witness had been examined, the mere circumstance that the complainant was again asked to respond to certain questions *ipso facto* did not prejudice the appellant. Instead even though his reiteration that he would cross-examine the complainant right at the end on his own terms was declined, and the matter was again adjourned. On the adjourned date too, the Enquiry Officer permitted cross examination of the complainant which was again declined by the appellant. Having regard to the totality of these circumstances, this Court is of the opinion that the conclusions of the Single Judge and the impugned judgment cannot be faulted. The appellant was afforded reasonable and fair opportunity to cross-examine the complainant.

9. The appeal for the above reasons lacks in merit and is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

APRIL 22, 2016/rb