

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17124 of 2012

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1. The Bank of India through the Chairman and Managing Director, having its Office at Head Office, State House, C-5, G Block, Bandra Kurla Complex, Bandra East, Mumbai
 2. The Zonal Manager Bank of India Having his Office at Zonal Office Chanakya Tower, Birchand Patel Marg, Patna

.... Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employment, New Delhi
2. The Chief Labour Commissioner (Central), New Delhi
3. The Assistant Director, I.R. (I.M.P. -1), Ministry of Labour and Employment, New Delhi
4. The Regional Labour Commissioner (Central), Patna, Bihar
5. The Assistant Labour Commissioner (Central) Ministry of Labour, Government of India, Maurya Lok Complex, Block A, 2nd Floor, Dakbanglow, Patna, Bihar
6. Sri Uma Shankar Ram Son Of Sri Lalji Ram Ex Staff Clerk, Bank of India, resident of Village Bharhria, Post Office Deohalia, Police Station Ramgarh, District Rohtas (Sasaram)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rupak Kumar, Advocate
For the Respondent No.6 : Mr. Birendra Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-03-2017



This writ application has been filed by the petitioner for setting aside the award dated 19.12.2011 passed by the Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court (No.2) (for short 'Labour Court'), Dhanbad pursuant to reference made under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short 'I.D. Act, 1947') whereby imposition of penalty of 'Dismissal Without Notice' inflicted upon the Respondent No. 6 by the disciplinary authority and confirmed by the appellate authority is set aside directing the Management to reinstate him with immediate effect with the seventy five percent back wages.

2. The facts of the case are as under :

At the relevant time Respondent No. 6 (for short 'workman') was posted as Clerk, Sisaura Branch of Bank of India. On account of certain acts of mid-conduct levelled against him, a memo of charge was served upon him vide charge-sheet dated 02.11.1991 comprising six charges. One Gurmeet Singh, a Staff Officer of the petitioner Bank was appointed as Inquiry Officer to conduct the departmental inquiry against the workman, who submitted his report on 17th July, 1993 pursuant to which, a show cause notice in respect of proposed punishment was issued to the workman on 11.12.1993 enclosing therein a copy of the report



and apprising him to avail of personal hearing. On 25.01.1994, the workman along with his defence representative appeared and was accorded personal hearing. Thereafter, a punishment order came to be passed on 10.03.1994 by the Disciplinary Authority-cum-Regional Manager, Gaya Region, Gaya dismissing the workman without notice and payment beyond subsistence allowance during the period of suspension and the increment falling due during this period were also withheld.

3. Being aggrieved by the aforesaid order of dismissal passed by the disciplinary authority, the workman preferred an appeal on 28.05.1994 before the appellate authority, the Zonal Manager, Bihar, North Zone, Patna. The appellate authority dismissed the appeal and confirmed the punishment order dated 10.03.1994 passed by the disciplinary authority vide order dated 25.07.1994.

4. Subsequently, the case of the workman was referred under Section 10(1)(d) of the I.D. Act, 1947 to Labour Court for adjudication. After hearing the parties, the Labour Court interfered and set aside the order of punishment dated 10.03.1994 and the appellate order dated 25.07.1994 vide impugned award dated 19.12.2011 and directed the management to reinstate the workman with immediate effect with 75 % back wages and its



consequential benefits till his restoration.

5. The aforesaid order dated 19.12.2011 is under challenge in the present writ petition.

6. Mr. Rupak Kumar, learned counsel for the petitioners submitted that the charges against the petitioner are quite serious and in the departmental inquiry, four out of six charges, were proved by leading cogent, oral and documentary evidences. He submitted that there was no procedural irregularity in conducting the inquiry against the workman and, as such, there was no occasion for the Labour Court to interfere with the order of punishment. He submitted that the Labour Court interfered with the order of punishment passed by the disciplinary authority and confirmed by the appellate authority even though it concurred with the finding of guilt recorded by them against the workman. He contended that the Labour Court failed to appreciate that the workman lacked devotion, diligence, honesty and impeccable integrity and, hence, his retention in service would be against the public interest.

7. *Per contra*, Mr. Birendra Kumar Jha, learned counsel for the workman submitted that there is no error in the order passed by the Labour Court whereby the petitioner-Bank has been directed to reinstate the workman with 75 % back wages from



the date of his dismissal i.e. 10.03.1994 till date of reinstatement. He submitted that the charges levelled against the workman are not so serious to attract him with the punishment of dismissal from service. He submitted that due to the alleged act of omission and commission, the Bank did not suffer any monetary loss and, hence, the order of punishment imposed by the disciplinary authority, which has been upheld by the appellate authority, is highly disproportionate and excessive in nature. He contended that the alleged misconduct was neither deliberate nor wilful rather the same occurred on account of heavy pressure of work in the Bank and the moment the workman realized his mistake, he immediately deposited the deficit amount in the account of the customers of the Bank. He submitted that prior to the alleged misconduct, the workman had worked in the Bank for about twelve years and during the aforesaid period nothing adverse was reported against him.

8. I have heard learned counsel for the parties and perused the record.

9. In order to appreciate the rival submissions made on behalf of the parties, it is deemed fit and proper at this stage to refer to the charges levelled in the disciplinary proceeding against the workman. They read as follows :



“Charge No. 1

On 03.09.1990 a sum of Rs.1000/- was deposited by Shri Shyamakant Tiwary in his savings Bank A/c. No. 12. You issued the relative receipt (counter foil) to him and entered the amount of Rs.1000/- in his savings Bank pass book as Credit entry but you did not enter this amount in the receipt scroll book and cash receipt book. The relative voucher was also removed from the records of the Bank. Thus, the amount of Rs.1000/- deposited by Shri Shyamakant Tiwary was not credited in his savings Bank A/c no. 12 in relative saving Bank ledger of the branch and the amount was misappropriated by you.

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.5 (j) of the First Bipartite Settlement dated 19.10.1966.

Charge No. II

To cover up your above mentioned action, on 08.09.1990 you altered the balances on page No.211 of Savings Bank Ledger No. 1 A/c. No. 12 of Sri Shyamakant Tiwary as under :

Date	Amount	Alerted to
28.09.1990	Rs.5576.91	Rs.6576.91
01.09.1990	Rs. 76.91	Rs.1076.91
07.09.1990	Rs.3676.91	Rs.4676.91

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.5(j) of the First Bipartite Settlement dated 19.10.1966.



Charge No. III

On 08.06.1990 when Shri Shyamakant Tiwary came to withdraw an amount of Rs.4600/- you altered the balances in his account as above (Charge-2) due to which the amount was paid to Sri Shyamakant Tiwary. But while checking, the Manager found the alteration in the Balance and found that the account is overdrawn by Rs.1000/- when the depositor was asked by the Manager regarding overdrawing he showed his S/B Pass Book and counterfoil of paying-in-slip dated 03.09.1990 in the Pass Book Rs.1000/- was credited as of 03.09.1990. When this was brought to your notice you immediately transferred an amount of Rs.1000/- from your Savings Bank account No. 640 to the account of Sri Shyamakant Tiwary on 08.09.1990.

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.5(j) of the First Bipartite Settlement dated 19.10.1966.

Charge No. IV

On 17.09.1990 a sum of Rs.1900/- was deposited by Sri Badri Singh in his Savings Bank A/C No. 142. You entered the amount of Rs.1900/- in his Savings Bank Pass Book and issued the relative receipt (counter foil) to him but you did not enter this amount in the receipt scroll book and cash receipt book. The relative voucher was also removed by you from the records of the Bank.



Thus the amount of Rs.1900/- deposited by Sri Badri Singh was not credited in his Savings Bank account No. 142 in relative Savings Bank ledger of the branch on 19.09.1990. When Sri Badri Singh came to the Bank this was reported to the Branch Manager. You deposited the amount of Rs.1900/- in cash to the A/c of Shri Badri Singh.

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.5(j) of the First Bipartite Settlement dated 19.10.1966.

Charge No. V

You purchased a Rajdoot Motorcycle out of Bank Loan. You have sold the said motorcycle fraudulently without transferring the ownership of the motorcycle but you have falsely stated that your motorcycle had been stolen. You have neither submitted a copy of any FIR lodged with police by you in connection with the alleged theft of motorcycle nor you have lodged the claim with the insurance Company in this regard.

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.5 (j) of the First Bipartite Settlement dated 19.10.1966.

Charge No. VI

On 07.05.1990 you withdrew an amount of Rs.300/- and on 01.06.1990 you again withdrew an amount of Rs.1200/- from Rampur branch vide Debit Note No. 1593 dated 07.05.1990 and No.3155 dated 10.06.1990 on Sisaura Branch



respectively. On these respective dates the balance in your S/B A/c with Sisaura branch was not sufficient to honour these debit notes.

Your aforesaid acts amount to acts of Gross Misconduct within the meaning of clause 19.05(j) of the First Bipartite Settlement dated 19.10.1966.”

10. From a perusal of the inquiry report, it would be evident that altogether three witnesses were examined on behalf of the management and apart from the oral evidence of the witnesses, certain documents were also produced and marked as exhibit during the inquiry proceeding. It would also appear that the workman accepted in his cross-examination the fact of non-credit of Rs.1,000/- into the account of Shyama Kant Tiwary and non-credit of Rs.1,900/- in the account of Sri Badri Singh, the two account holders of the Bank after receiving the amount from them for deposit in their respective accounts. The inquiry report further reveals that there is evidence to the effect that when the matter of non-credit of the aforesaid amount of the two customers was reported to the Regional Office of the Bank, the workman transferred the amount of the aforesaid Shyamakant Tiwary and Badri Singh in their respective accounts from his own account. The evidence further revealed that he made overwriting and alteration in the books of the Bank.



11. On the basis of the evidences led, the Inquiry Officer opined that the first four charges made against the workman are proved whereas the 5th and 6th charges could not be proved against him due to lack of evidence.

12. Thereafter, the disciplinary authority did issue a notice of proposed punishment to the workman to which he responded and pleaded that the alleged omission was due to pressure of work and the Bank did not suffer any loss due to the alleged misconduct.

13. Upon examination of the entire material, the disciplinary authority came to a conclusion that the materials on record make it evident that the workman deposited the amount received from aforesaid account holders Shyama Kant Tiwary and Badri Singh in their account only after it came to his notice that the matter of non-credit of the amount in question in saving bank account of the customers was reported to the superior authorities of the Bank. The defence of the workman that the money was not deposited in the account of the customers due to heavy pressure of work has not been accepted on appreciation of the evidence adduced during inquiry. The disciplinary authority came to a finding that the defence was merely an excuse to cover up the crime of embezzlement and the subsequent deposit of amount



would not exonerate the workman from the charge of misappropriation. The disciplinary authority also came to a conclusion that in order to cover up his crime, the workman had fraudulently made alteration in the official documents of the Bank.

14. After scrutinizing the evidences laid during inquiry proceeding and after going through the defence taken, the disciplinary authority observed in its order dated 10.03.1994 as follows :

“I am of the opinion that the charges proved against you in the departmental Enquiry are very serious in nature and warrants deterrent punishment. The Bank being custodian of public money cannot afford to keep an employee in service whose conduct and integrity is not above board. Keeping in view the gravity of misconduct, I am of the judicious opinion that the end of justice will be met if I impose upon you the following punishment for the proved charges mentioned in charge sheet...”

15. Further, although the disciplinary authority found the case of the petitioner fit for ‘Dismissal Without Notice’ from the Bank’s service in terms of Para 19.6(a) of the Bipartite Settlement dated 19.10.1966 for each of the four proved charges. However, it awarded consolidated punishment against the workman



observing as follows :

“However, I award you the consolidated punishment of ‘DISMISSAL WITHOUT NOTICE FROM BANK’S SERVICE’ in terms of Para 19.6(a) of Bipartite Settlement dated 19.10.1966.

Accordingly, I order as under :

ORDER

‘ Shree Uma Shankar Ram, Staff- Cash-cum-Accounts Clerk, C/O Bank’s Ramgarh Branch be and is hereby awarded the consolidated punishment of dismissal without notice from Bank’s service in terms of Para 19.6(a) of Bipartite Settlement dated 19.10.1966 for the acts of Misconducts mentioned in the Chargesheet No. RO:DPG:91-92:002120 dated 02.11.1991 and proved against him during the enquiry proceedings.’

You were under suspension w.e.f. 5.1.91 to 11.12.92. Please note that your period of suspension is treated as not spent on duty and you will not be entitled for any salary and allowances during the said period of your suspension except the subsistence allowance already paid to you. Please also note that your annual increment falling due during the period of suspension is withheld.”



16. The appellate authority on re-appreciation of the materials on record vide order dated 25.07.1994 observed as follows :

“Upon careful consideration of entire materials on Enquiry record, I am of the opinion that the Findings of Enquiry Officer are based on the materials available on Enquiry record and the Regional Manager, Gaya Region and Disciplinary Authority was right in concurring with the findings of Enquiry Officer. Considering the gravity of the misconduct and the fact that the bank is financial institution & being custodian of Public money the conduct and integrity of its Employee should be above board, I am of the considered opinion that the Regional Manager, Gaya Region and Disciplinary Authority was judicious in awarding you the consolidated punishment of ‘DISMISSAL WITHOUT NOTICE’ from Bank’s service in terms of Para 19.6 (a) of Bipartite Settlement dated 19.10.1966 for the acts of misconduct mentioned in the charge sheet No. RO/DPG/91-92/002120 dated 2.11.1991 and proved against you in the Enquiry Proceedings. I do not find any justifiable reason to interfere with the Punishment already awarded to you by the Regional Manager, Gaya Region and



Disciplinary Authority. Accordingly, I order as under :-

ORDER

THE PUNISHMENT OF “DISMISSAL WITHOUT NOTICE” FROM BANK’S SERVICE IN TERMS OF PARA 19.6 (a) OF BIPARTITE SETTLEMENT DATED 19.10.1966 AWARDED BY REGIONAL MANAGER, GAYA REGION AND DISCIPLINARY AUTHORITY TO SHRI U.S. RAM VIDE PUNISHMENT ORDER NO. RO/RM/MBR/085A DATED 10.3.94 (SERVED UPON SHRI U. S. RAM ON 31.3.94) BE AND IS HEREBY CONFIRMED AND ACCORDINGLY THIS APPEAL IS DISPOSED OF.”

17. Upon reference, the Labour Court in exercise of its power under Section 11-A of the I.D. Act passed the impugned order on 19.12.2011, operative part of which reads as under :

“6. In this case, on due consideration of all the materials oral and documentary both as adduced by W- 1 Prasant Kumar Tripathy, the Industrial Relation Officer, B.O.I, Patna Zone as well as W-1 Uma Shankar Ram, the workman himself at the preliminary point, **this Tribunal as per order dt. 6.7.11 has held the Domestic Enquiry as fair, proper and in accordance with the principles of natural justice.** Thus, the case



came for hearing the argument of both the parties on merits. Mr. D.K. Verma, the learned Advocate for the Management appeared on 14.7.11 and argued, but Md. D. K. Jha, the learned Advocate for the workman appeared neither on the said date nor on the last date 15.9.11; despite giving him sufficient opportunities, Mr. Jha, Advocate for the workman could not argue; hence on the latter date, the award stood reserved for order.

7. Mr. D. K. Verma, the learned Advocate for the Management, has submitted that the defalcation charge has been clearly proved against the workman, so his dismissal as punishment was not only just and proper in view of his misconduct of serious nature but also quick proportionate to the dismissal of the workman for it.

8. On the perusal and appreciation of all the materials in Exhibited document of the Management (Ext. 1 to 8) and those of the workman u/s 11-A of the Industrial Dispute Act, 1947, I find the following facts as indisputable :

- (i) Workman Uma Shankar Ram as a staff-clerk-cashier at Sisaura Branch of the Management was suspended as per the Suspension Order dt. 25.12.1990 (Ext. W-1) of the Regional Manager cum Disciplinary Authority hereinafter referred as RM/DM for his alleged gross



misconducts :-

- (a) not properly crediting the sum of Rs.1,000 in the Savings Bank A/c No. 12 Holder Shyamakant Tiwary on 3.9.1990;
- (b) Altering its balance in its ledger upon his causing for withdrawal of Rs.4,600 on 8.9.1990.
- (c) not entering the sum of Rs.1,900/- in the books of the receipt scroll and cash and remaining the relative vouchers from the bank records “ related to A/c holder Badri Singh on 17.9.1999;
- (d) and not debiting intentionally his A/c No. 640 on 1.9.1990 against his alleged marked the ledger folio No on the withdrawal slip show as if posted in his Account his withdrawal of Rs.600/- from his own A/c (the workman concerned).
- (ii) The charge sheet dt. 2.11.1991 (Ext. W-3 as an enclosure to the RM/DA's letter 2.2.91 alleged total six charges against the workman out of which the charges Nos. 1 to 3 relate to A-1. On 3.9.1990 unentering and increditing Rs.1,000/- deposited S.B.A/c No. 12 holder Sri Shamakant Tiwary in Scroll Book & Receipt Book and removal of its voucher from the records concerned.
- (2) On 8.9.1990 the alternation of the balances



in the S.B. Ledger No. 1 of the aforesaid Account.

- (3) On the same date the payment after transfer of the amount from his own A/c No. 640 to the aforesaid Holder's Account.
- (4) Likewise concerning the sum of Rs.1900/- of Sri Badri Singh A/c Holder No. 142 and prompt deposit of it in his A/c.
- (5) Fifth charge as to fraudulent and false statement of the workman in respect of his motorcycle and its theft, for which neither submitting its F.I.R. nor lodging a claim with the Insurance Company.
- (6) Sixth charge- for over withdrawing Rs.300/- and Rs.1200/- as per the debit notes Nos. 1593 and 3150 dt. 7.5.1990 and 10.6.1990 respectively by him from his A/c at Sirasua Br. without his sufficient balance.

All these acts are alleged to be gross misconducts under Clause 19-5(j) of the First Bipartite Settlement dt.19.10.1966.

(iii) After due enquiry into the charge, the Enquiry Officer Mr. Gurmeet Singh as per his enquiry report dt. 17.7.1993 (Ext.M-4) held the workman guilty of the aforesaid first four charges only, for which the Regional Manager, Gaya Region-cum- Disciplinary Authority as per his order dt. 10.3.1994 (Ext.M-6) awarded the



workman with his consolidated punishment of dismissal without notice from his Bank's service which was also remained upheld by the Appellate Authority concerned as per his order dt. 25.7.1994 (Ext. M-8) over appeal of the workman (Ext. M-7).

9. On going through the aforesaid materials of the records, it stands clear that the workman had admitted his negligent acts of not entering & crediting the aforesaid petty amounts in the S/B A/C of the both aforesaid accounts Holders Mr. Shyamakant Tiwari and Badri Singh and the ledger etc at the relevant time at the Branch concerned situated in rural area where he was alone working as Clerk and Cashier. There is no documentary proof of any financial loss to the Bank by his conduct nor of any intentional misappropriation of the said petty amounts. The workman has clearly depicted the situation he was working under pressure, so under these circumstances such negligent act on the part of the workman may be expected of any workman working in the same situation of the Bank concerned at the relevant time. For such human negligent, but not intentional, acts on the part of the workman, the management ought to have punished him with the lesser punishment such as deduction of one increment with a view to reform him in



future, but his dismissal from the service which amounted to not only his financial death but also to his dependent family members' as earlier reported by the workman himself. Hence, dismissal of the workman from his service is quite unfair and disproportionate to the nature of the alleged misconduct which can not be said to be gross for his admitted negligence.

Under these circumstances, I hold that the action of the Management of Bank of India in dismissing the service of Shri U.S. Ram, Ex-Clerk-cum-Cashier w.e.f. 25.2.1994 (or 10.3.1994 as per punishment order dt. 10.3.1994) is totally unjustified and illegal in view of jurisprudence of labour legislation. Therefore, punishment order dated 10.3.1994 or as per schedule one dt. 25.4.1994 is set aside directing the Management to reinstate him with immediate effect with the 75 (Seventy five) percent back wages and its consequential benefits till his restoration, as he has already suffered irreparable financial loss for his negligent conduct. The Management is directed to implement the order within one month from the date of receipt of the Award after its publication in the Gazette of India.”

(emphasis mine)



18. Since the aforesaid order has been passed by the Labour Court in exercise of power under Section 11-A of the I.D. Act, at this juncture, I think it apt to take into consideration the aforesaid provision, which reads as under:

“11-A. Powers of Labor 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 Labor Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labor 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 Labor 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.”



19. From perusal of the above provisions, it would be evident that after enactment of Section 11-A, the workman is protected against the punishment of dismissal or discharge which is not proportionate to the misconduct. It also gives the employer an opportunity to adduce evidence before the Tribunal or Labour Court justifying his action. Thus, it is a safety measure, which enable the Tribunal or the Labour Court, in the event the punishment imposed is shockingly disproportionate.

20. The proviso to Section 11-A stipulates the condition whereby the Tribunal or the Labour Court is required to confine itself to examine the merits of domestic enquiry on the basis of evidence already on record.

21. In the light of the above, when I look the record of the case and the impugned award passed by the Labour Court, it is difficult to sustain the award. The Labour Court has passed the award in a very casual and cavalier manner. It has not only recorded that the domestic enquiry was conducted in fair and proper manner in accordance with principle of natural justice and that the workman had admitted his negligent acts of not entering and crediting the amounts in the Bank accounts of Mr. Shyamakant Tiwari and Badri Singh and the Ledger etc. but also found the charges of alteration of the balances in the Savings Bank Ledger of



the two account holders. Even though, it recorded that the Management ought to have punished him with lesser punishment such as deduction of one increment with a view to reform him in future and dismissal was quite unfair and disproportionate to the nature of the alleged misconduct, it did not substitute the punishment imposed by the Management by imposing any other suitable penalty rather it rewarded the workman for the proven misconduct by directing his reinstatement with 75 per cent back wages and consequential benefits till his restoration.

22. Coming back to the proved charges, I find them to be extremely serious. The workman has been found guilty of temporary misappropriation as also alteration and forgery in the official Ledger of the Bank. There is not only concurrent finding of fact but the workman has also admitted the charges. Under such circumstances, it cannot be said by any stretch of imagination that punishment of dismissal was disproportionate to the charges. On the contrary, in the opinion of this Court, such a workman cannot be retained at least in Banking Service as being an employee in a position of trust, he had misappropriated the public money and falsified and altered the official record. The same would amount to serious misconduct, destroying or undermining the relationship of trust and confidence between a workman and the management. In



my considered opinion, without the trust and confidence an employment relationship cannot continue.

23. In the opinion of this Court, since a fair inquiry and disciplinary proceeding was held against the workman the disciplinary authority had rightly chosen to dismiss him for the charges of serious misconduct. Further, the finding of the Labour Court that the Bank did not suffer any financial loss would be of no consequence as an inference can be drawn from the circumstances that the workman had made embezzlement with a premeditated mind methodically and in an attempt to minimize the risk of detection of the misappropriation of the amount, he had also tampered the official records. The subsequent deposit made by the workman was only an effort to cover up his misconduct on realization of the fact that the matter has been reported to the superior officers of the Bank.

24. Furthermore, the objective of imposing punishment on a workman if charges are proved is not only to deter him from committing such mistake but also it gives a warning to the other workman not to commit misconduct. In order to maintain discipline in employment, it is necessary to award appropriate punishment to the workman in case of proved misconduct. In case of misappropriation, forgery of official record etc. especially when



a workman is employed in Bank, the order of dismissal cannot be said to be disproportionate or excessive in nature.

25. In the light of the above discussion, I would like to discuss hereunder some of the land mark judgments of the Supreme Court upholding the decision of the employer where the Tribunal/Labour Court interfered with the punishment awarded by the employer in more or less similar situation.

26. In *Bharat Heavy Electricals Ltd. vs. M. Chandrasekhar Reddy and Ors* [(2005) 2 SCC 481], the Supreme Court had an occasion to examine the jurisdiction of the labour court under Section 11-A of the I.D. Act to alter the sentence in spite of coming to the conclusion that the enquiry conducted by the management was correct and just and finding of guilt recorded by the enquiry officer was based on facts. In that case, the Supreme Court held that there was no unfettered discretion vested in the Labour Court or with any judicial or quasi-judicial forum as an unlimited jurisdiction leads to unreasonableness. It held that no authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by accepted materials and reasons thereon. On the facts involved in that case, it held that the loss of confidence was imminent and since no finding had been given by the Labour



Court or even the High Court that either the facts of loss of confidence or the quantum of punishment was so harsh as to be vindictive or shockingly disproportionate, interference with the award of punishment in a domestic enquiry was impermissible. The Supreme Court took into consideration several judgments passed by it on earlier occasions in paras 19 to 24 which are as under :

“19. The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In *Air India Corporation v. V.A. Rebellow [(1972) 1 SCC 814]*, this Court held with reference to loss of confidence as follows :-

"...Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge...."

20. In *Francis Klein and Company (P) Ltd. v. Workmen [(1972) 4 SCC 569]*, this Court held:-

"In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement.

* * *



Even this direction is not a valid direction because if once the Company has lost confidence in its employee, it is idle to ask them to employ such a person in another job. What job can there be in a Company which a person can be entrusted with and which does not entail reposing of confidence in that person."

21. In *Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Secy. Sahakari Noukarara Sangha [(2000) 7 SCC 517]*, this Court held :-

"Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled"

* * *

In case of proved misappropriation, in our view, there is no question of considering past [service record]. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

22. In *U.P.SRTC v. Mohan Lal Gupta [(2000)*



9 SCC 521], this Court held :-

"The employee has been found to be guilty of misappropriation and in such an event, if the appellant-Corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own by allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment"

23. With reference to Section 11-A of the Act, in the case of ***Workmen v. Firestone Tyre & Rubber Co. of India (p) Ltd.***[(1973) 1 SCC 813], this Court held :-

"Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation"

"If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the



employer"

24. In *CMC Hospital Employees' Union v. Christian Medical College Vellore Assn.* [(1987) 4 SCC 691], this Court held :-

"Section 11-A ... cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision"

27. In *U. P. State Road Transport Corporation vs. Mohan Lal Gupta and Ors.* [(2000) 9 SCC 521], the Supreme Court held: "....The employee has been found guilty of misappropriation and in such an event, if the appellant Corporation loses its confidence vis-à-vis the employee it will neither be proper nor fair on the part of the Court to substitute the findings and confidence of the employer with that of its own by



allowing reinstatement. The misconduct stands proved and in such a situation by reason of gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment.”

28. In ***UP State Road Transport Corporation vs. Suresh Chand Sharma [(2010) 6 SCC 555]***, it was contended that an embezzlement of petty sum did not warrant the punishment of dismissal. The Supreme Court rejected the submission by observing as under :-

“21. We do not find any force in the submissions made by Dr. J. N. Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.

22. In ***Municipal Committee, Bahadurgarh v. Krishnan Bihari [(1996) 2 SCC 714]***, this Court held as under :-

"4. ... In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small



or large; it is the act of misappropriation that is relevant."

Similar view has been reiterated by the Supreme Court in *Ruston & Hornsby (I) Ltd. v. T.B. Kadam* [(1976) 3 SCC 71]; *U.P. SRTC v. Basudeo Chaudhary* [(1997) 11 SCC 370]; *Janatha Bazar (South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha* [(2000) 7 SCC 517]; *Karnataka SRTC v. B.S. Hullikatti* [(2001) 2 SCC 574]; and *Rajasthan SRTC v. Ghanshyam Sharma* [(2002) 10 SCC 330].

23. In *N.E.K.R.T.C. v. H. Amaresh* [(2006) 6 SCC 187] and *U.P.S.R.T.C. v. Vinod Kumar*, (2008) 1 SCC 115, this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal."

29. In a recent judgment of the Supreme Court in *U.P. Road Transport Corporation & Anr. vs. Gopal Shukla and Anr.* [2015-IV-LLJ-1(SC)], the Court upheld the order of the disciplinary authority who had dismissed the bus conductor for allowing 25 passengers to travel in the bus without ticket and reversed the findings of the Labour Court and the High Court which by taking a lenient view had reinstated him to service. It held that both the Labour Court and the High Court have fallen in error



by imposing a lesser punishment where only punishment should have been dismissal and not a lesser one.

30. For the reasons noted above and the ratio laid down by the Supreme Court in the aforesaid decisions, in my considered opinion, the writ application deserves to be allowed. The impugned award of the Labour Court dated 19.12.2011, which is based on misplaced sympathy and generosity is, hereby, set aside. The writ application stands allowed.

31. The parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

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CAV DATE	NA
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