

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1016 of 2010
IN
Civil Writ Jurisdiction Case No. 2142 of 2008**

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Sarat Chandra Srivastava, S/O Late Ganga Prasad Srivastava, Working As Cashier
Cum General Clerk, United Bank Of India, Jalalpur Branch, P.O. Sahay Nagar,
Patna.

(Respondent No.4)/ Appellant/s

Versus

1. United Bank Of India, Through The Chief Regional Manager , Bihar Region
Abhay Bhawan, 2nd Floor , Fraser Road, Patna, P.S. Kotwali, District Patna,
Having Its Head Office At 11, Hemant Basu Sarani, Kolkata – 700001
....(Petitioner) 1st Party
2. Union Bank Of India, Through The Secretary, Ministry Of Labour, New Delhi.
3. The Regional / Assistant Labour Commissioner (Central), 2nd Floor, Maurya
Lok, Patna.
4. The Presiding Officer, Industrial Tribunal, Patna, Bailey Road, Patna.

...(Respondents 1 to 3) Respondent 2nd Parties
.... Respondent/s

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Appearance :

For the Appellant/s : Mr.S D Sanjay
Ms. Priya Gupta
Mr. Alok Kumar Agrawal
Ms. Parul Prasad

For the Respondent/s : Mr. Manok Kumar Sinha
Mr. Ajay Kumar Sinha
Mr. Binod Bihari Sinha
Mr. Ajay Dutt Mishra
Mr. Amarjeet Choudhary

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-11-2017

Seeking exception to an order passed by the
learned Writ Court on 20.05.2010 in CWJC No. 2142 of 2008
allowing the writ petition filed by the respondent Bank and setting



aside an award dated 14th August, 2007 passed by the Presiding Officer, Industrial Tribunal, Patna on a reference made to it under Section 10 read with Section 2A of the industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), this appeal under Clause 10 of the Letters Patent has been filed by the appellant who was workman in the case in question.

The appellant was workman in the United Bank of India, Patna as Cashier-cum-Clerk. Based on two domestic enquiries conducted against him he was punished and punishment of demotion and withholding of recovery from salary was ordered against him. The matter was referred to the Industrial Tribunal. The Tribunal after detailed enquiries of the matter in question came to the conclusion that even though the enquiry has been properly conducted but the allegations against the Enquiry Officer shows that there was no free from bias, principle of natural justice in conducting the enquiry was not properly followed and the enquiry recorded by the disciplinary authority and the Enquiry Officer were wholly perverse and, therefore, punishment was quashed. It may be taken note that before this was passed awarded on 14th August, 2007 the Tribunal after analyzing all the evidence found that even the enquiry was according to the principle of natural justice and no prejudice was caused to the workman but the charges levelled against the workman were not



proved, finding of the Enquiry Officer was illegal and perverse and, therefore, interfered with the punishment order. It may be taken note of that before this Court award dated 14.08.2007 earlier by appellate authority passed on 7th April, 2005 the Industrial Tribunal had held that domestic enquiry conducted is not free from bias, principle of natural justice were not followed and the punishment imposed is also not sustainable. However, at the instance of the Bank a writ petition was filed being CWJC No. 14103 of 2005 and vide Annexure-5 dated 10.7.2006 a Bench of this Court found that in the situation that has come on record and remanded back for reconsideration which also included the question of award being based on the material that has come on record. Be that as it may, in the impugned order, the learned Writ Court took note of the reference made, the question arose out of the reference and found that once the departmental enquiry conducted was proper, when there is no infirmity in the departmental enquiry and once it is held that the enquiry was ordered as per the principles of natural justice, then the finding recorded with the report of the Enquiry officer is perverse is not proper. It was beyond the jurisdiction of the Tribunal and the Tribunal having jurisdiction beyond the scope of the reference interference has been made.

Before us, learned counsel for the appellant argued that if the finding recorded by the Enquiry officer itself was perverse this



would amount to violative of the principles of natural justice, making the enquiry and finding illegal, on this count when interference was made by the Industrial Tribunal interference into the matter was not called for.

Learned counsel for the Bank invited our attention to the judgment of the Supreme Court in the case of **The Workmen of M/s Firestone Tyre and Rubber Co. of India Pvt. Ltd. v. The Management & Ors. (AIR 1973 SC 1227)** to argue that in a case to which Section 11A of the Act is applicable the Industrial Court or Labour Court will have the jurisdiction to go into various issues like quantum of punishment etc, but in a case of punishment any other power available under Section 11A cannot be exercised and therefore the learned Writ Court has not committed any error.

We have heard and considered the rival contentions of the parties before us in detail and on going through the award in question we find that the learned Tribunal has analyzed the evidence that have come on record before it and even though found that the enquiry has been properly conducted but after going through statement of the witnesses the finding recorded is that the finding of the Enquiry Officer is totally perverse and contrary to the material available on record. In Paragraph 13 of the award the Industrial Court holds that the onus to prove the charges levelled against the workman



was on the management and it is only when charges are proved by the management that the onus shifts on the workman to give his defence. The learned Tribunal after considering the legal evidence adduced by the management found that none of the charges are proved. The allegation of shout and abusing with filthy language was not even proved from the statement of the complainant MW 2 and with regard to the second charge also it is found that the charges are perverse and a proper finding has not been recorded. From paragraph 29 onwards the learned Tribunal has primarily discussed each and every aspect of the matter and in paragraph 38 it is held that based on such perverse finding which is not supported by evidence punishment is unsustainable. However, the learned Writ Court in the present case considered reference made and held that the Tribunal was required to determine the following four questions :-

“(i) Whether the disciplinary proceedings were conducted free from bias?

(ii) Whether the enquiries held were according to the principles of natural justice?

(iii) Whether the punishment imposed is just and legal?

(iv) If not to what relief the workman is entitled to?”..

As the question of perversity and the quantity of punishment cannot be interfered with and as it was beyond the scope



of reference it has interfered into the matter and in our considered view the finding of the learned Writ Court with respect cannot be agreed to by us. The question as to whether the enquiry was properly conducted and in accordance with the principles of natural justice would also include the question as to whether the finding recorded by the Enquiry Officer was a proper finding based on the evidence that come on record, whether the Enquiry officer has adopted a prudent man approach while recording his finding. In case of **Anil Kumar vs. Presiding officer (AIR 1985 SC 1121)** which was also a case arising out of a disciplinary action taken and its consideration in a dispute raised under the I.D. Act. The learned Supreme Court took note of the issue of perversity and illegality in recording finding by the Enquiry Officer and in the matter of recording of finding by the Enquiry officer in paragraphs 5 and 6 of the aforesaid judgment the principles laid down reads as under :-

“5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit



of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In [Madhya Pradesh Industries Ltd. v. Union of India](#) , this Court observed that a speaking order will at best be a reasonable and at its worst be atleast a plausible one. The public should not be deprived of this only safeguard. Similarly in [Mahabir Prasad v. State of Uttar Pradesh](#) , this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

From the aforesaid, it is clear that if the finding recorded by the Enquiry Officer is found to be perverse, it amounts to violation of the principles of natural justice and an award can be quashed on such consideration. In the present case also, this is precisely what the Tribunal has done. It has found the award passed to be wholly perverse and has enquired into the matter by holding that the based



on such perverse finding which amounts to violation of the principles of natural justice the punishment is unsustainable.

In our considered view, the approach by the Industrial Court is proper and in accordance with law. The learned Writ Court has committed error in interfering with the aforesaid reasonable order by the Tribunal.

Accordingly, we allow this appeal, set aside the order passed by the learned Writ Court and restore the award passed by the Industrial Tribunal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mrl./-

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