

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 10458 of 2003
Date of Decision: 6.4.2017

Darshan Singh

... Petitioner

Versus

Canara Bank and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Samarth Sagar, Advocate for the petitioner

Mr.Mukul Aggarwal, Advocate for the respondents

RAJIV NARAIN RAINA, J. (Oral)

1. Whether misconduct bordering criminal transgression committed in a Bank by an employee bound by a fiduciary relationship between the customer and Bank has necessarily to be dealt with by putting the criminal law in motion, irrespective of financial loss not caused to the Bank? Or whether it would suffice to hold a departmental enquiry? This is the star argument raised in this writ petition which arises out of a departmental enquiry leading to the petitioner's dismissal from service on 6th August, 1996.

2. The disciplinary authority agreed with the findings of the Enquiry Officer recorded in his report where charges levelled were proven. The petitioner submitted his reply to the report. The petitioner accused one R.K.Gupta, Manager said to be the mastermind behind the whole action taken against the petitioner. The evidence produced by the petitioner of the customers in whose accounts alleged misappropriation and irregularities were committed categorically admitted that the amounts

alleged to be misappropriated, were received by him but were deposited later on. If this was not embezzlement or misappropriation, they most certainly tantamount to temporary embezzlement or misappropriation and that would be sufficient to bring home the charge.

3. Against the dismissal order, the petitioner raised an industrial dispute which was referred to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh (for short the “the Labour Court”) for determination. The Labour Court has answered the reference against the petitioner and in favour of the Bank and dismissed the case.

4. The petitioner was charge-sheeted on three counts. The first charge was that as a Clerk serving in the Bathinda Branch of the Bank in 1995, he had while performing the duties of Cashier, prepared Credit Slip for ₹ 5000/- and received the said amount from one Baldev Singh for crediting to his SB Account No.5543, standing in the name of his son, Amrik Singh. He came to know that the petitioner did not account for the amount on 25th April, 1995 and retained the same alongwith the respective SB challan dated 25th April, 1995 unauthorizedly. He made an entry in the ledger folio pertaining to the same account without mentioning the date and without making any corresponding Credit Slip. He also prepared a Pass-book and remitted the money by using the said SB Challan/Slip dated 25th April, 1995 and made a fictitious credit of ₹ 5000/- later on without informing and bringing this fact to the knowledge of the Supervisor concerned. The fictitious entry was initialled by the petitioner. Subsequently, on 6th May, 1995, he remitted the money by using the said SB Challan/Slip dated 25th April, 1995 and by this act, he had acted with ulterior motive to misappropriate the amount remitted by the customer. He acted prejudicial to the interest of the Bank.

5. The second charge related to the account holder- Gurpreet Singh operating SB Account No.6096 on three different dates from May, 1994 to March, 1995 after being handed over amounts of ₹ 21,000/-, 12,500/-, 20,000/- respectively from the customer, but remitted the amounts by making fictitious entries in the passbook tendered by the customer which were less than the amounts meant for deposit in the account and by this action, he misappropriated ₹ 1,000/- and ₹ 20,000/- on the above said dates. In order to cover up the said fraudulent acts, he made the false/unauthorized entries in the Ledger Folio/Subsidiary Sheet of the relative Ledger. The modus adopted is detailed in the imputation of charges which require hardly an elaboration. These actions in the Bank tantamount to gross misconduct within the meaning of Chapter XI, Regulation 3 (j) of the Canara Bank Service Code. This action of the petitioner was prejudicial to the interest of the Bank.

6. The third charge was that he made a false Credit Entry of ₹ 10,000/- in the Ledger Folio of SB Account No.5613 standing in the name of one Mahavir Singla, without corresponding credit slip and mentioning any date. He made the said false Credit Entry in the relative pass book of the SB Account holder. When the petitioner was informed by the Customer that the entry of ₹ 10,000/- did not belong to him, the petitioner had struck off the said entry of ₹ 10,000/- in the Pass Book of the Account Holder, without cancelling the same in the relative Ledger Sheet. He has thus tampered with the Bank records which is detrimental to the interest of the Bank.

7. The procedure adopted in the enquiry has not been challenged. It is only the findings of the Enquiry Officer and the further

the bedrock of challenge to the award. All the charges were proved in the enquiry and the procedure prescribed was followed till the passing of the dismissal order.

8. It is argued by Mr. Samarth Sagar, learned counsel for the petitioner that no financial loss was caused to the Bank, and therefore, the extreme punishment of dismissal is illegal and arbitrary. This is also for the reason that the customers did not make any complaint against the petitioner. This was a case of discovery, and there was sufficient explanation given by the petitioner which considerably watered down the alleged misconduct.

9. The next contention of the learned counsel for the petitioner is that the Labour Court failed to exercise jurisdiction under Section 11A of the Industrial Disputes Act, 1947 (for short the “Act”). There were mitigating circumstances which ought to have been considered by the Labour Court in awarding lesser punishment. The charges were of misappropriation of funds and the same were deposited and the irregularities pertained only to the entries in the registers. All said and done, the totality of the circumstances indicated only a bona fide mistake. Committing a mistake is not per se a misconduct when not intended. Moreover, the explanation tendered by the petitioner was quite explanatory that lesser amounts were received from the customer and the same were deposited. These factors were relevant to the decision making and deserved to have been applied at the time of imposing the extreme punishment of dismissal. The disciplinary authority did not pay heed to the record of past service of the petitioner and especially, commendation certificates received by him.

10. The contention that the Labour Court was under legal obligation to exercise jurisdiction under Section 11A of the Act is misplaced. Section 11A concedes wide powers to Labour Courts and Tribunals to give appropriate relief in cases of discharge or dismissal to workmen. However, jurisdiction under Section 11A is a request jurisdiction and is not self igniting. The Labour Court is neither under an obligation nor is in duty bound to invoke Section 11A of the Act when it is not asked for by either of the parties and that too preferably in the first instance in the statement of claims before the evidence starts. The Labour Court did not hold that the enquiry was an empty formality or was defective, unfair or unjust for the stage to be set for consideration under Section 11A of the Act. Section 11A applies when no enquiry has been held of the one held is defective, otherwise not. Either of the situations would not warrant Labour Court to straightaway order reinstatement.

11. I asked Mr. Sagar to tell me frankly whether the petitioner had made any request in writing to the Labour Court for invoking Section 11A of the Act in his favour pleading that he should be given opportunity to lead further evidence to prove his innocence before the Labour Court de hors and in addition to the material of record of the enquiry. If such an opportunity is asked for, the Tribunal has no right to refuse. It steps into the shoes of the enquiry officer or converts itself as one. The Tribunal wears the robes of the disciplinary authority or as an appellate authority over the punishing authority\, as the case may be. On this query, learned counsel has affirmed in the negative. Therefore, the argument based on Section 11-A has to be only noticed and rejected. Had the Labour Court been asked in writing before the evidence was recorded that protection of

Section 11-A of the Act should be given, it would have been a different

matter. The learned Labour Court would then have been bound to permit the workman to bring any further evidence or material by holding the enquiry itself.

12. Mr.Sagar, then relies on the ruling in Raghubir Singh vs. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301 to bring his case to the harbour of proportionality of punishment to urge it was harsh and oppressive. The said case arose out of a labour dispute and the principles laid down therein are meant to be followed, but I do not see how the facts of that case match the facts in this case in relation to the kind of misconduct that Supreme Court examined on the anvil of the principle of proportionality and the application of *wednesbury* principles. There is no doubt that once reference is made by the appropriate Government in exercise of statutory power to the Labour Court for adjudication, it is statutory duty of the Labour Court under Section 11-A of the Act to adjudicate the disputes on merits. This Section was inserted by the Amendment Act 45 of 1971 (w.e.f. 15th December, 1972) with the object to examine the important aspect of proportionality of punishment imposed upon, if the acts of misconduct alleged against the workman are proved and such power is also traceable to the International Labour Organization Resolution. The principle of proportionality has to be applied at the stage of taking disciplinary action against a workman to satisfy the principles of natural justice and safeguard the rights of workman against arbitrary action.

13. In *Raghubir Singh, supra*, the Supreme Court found a case of misconduct and punishment of termination awarded as one that shocked the conscience of the Court, and therefore, the relief followed. There is nothing shocking the conscience of this Court in this case where

commission of grave misconduct is to say the least proved to be a case temporary embezzlement of money in a Bank where the relationship between the Bank and its employees is based on absolute good faith, otherwise the banking practices would be violated resulting in loss of faith of customers in the Bank. The reputation of a Bank is uppermost consideration and private interest must yield to public interest, public good, public trust and public order. Bank employees deal with public money, and therefore, cannot be treated leniently. Misconduct such as this cannot be treated lightly as if it was a passing phase or a reformatory approach was the better option.

14. Mr. Sagar, has had the fairness and the strength to cite Assistant General Manager, SBI vs. Thomas Jose and another, (2000) 10 SCC 280 regarding powers of Labour Court/Tribunal to modify punishment of discharge/dismissal imposed by an employer. That case involved a bank employee dismissed from service on account of admitted misconduct of withdrawing money unauthorisedly from customer's account. The Tribunal ordered reinstatement without back-wages. The writ petition filed by the Bank against the award of the Tribunal was dismissed by the Kerala High Court relying upon Scooters India Ltd. vs. Labour Court, Lucknow, AIR 1989 SC 149. The Supreme Court did not agree with the High Court and modified the award so that the workman is reinstated in the Bank's service, but without back-wages and without any increments for a period of 10 years with all the cumulative consequences. The period of 10 years was made to run from the date of the pronouncement of the judgment. The ratio appears to be that denial of back wages is not lesser punishment and instead 10 future increments with

cumulative effect were stopped by the Supreme Court in exercise of its special jurisdiction. I fail to see how this case would help the petitioner.

15. There is another decision of the Delhi High Court cited by the petitioner in Chaman Lal vs. State Bank of India, ILR (2003) II Delhi 168 on the doctrine of proportionality. It was a case of dismissal after 30 years of service. No loss was caused to the Bank. The Court found it is a case of disproportionate punishment in view of the nature of the charges proved which it did not consider grave enough to warrant dismissal. The dismissal was converted to compulsory retirement with terminal benefits. The Delhi High Court weighed the dismissal order keeping in view the period of 32 years of service rendered by the petitioner. The High Court observed that law on this point is well settled that Court in normal circumstances would not substitute its own opinion or will not substitute one punishment for another. The High Court applied the leading judgment of the Supreme Court in Om Kumar and others vs. Union of India, 2001 SCC (L&S) 1039 where the principles of review and proportionality have been culled out by the Supreme Court in the context of discrimination under Article 14 of the Constitution of India. The Court can interfere in review of punishment only if it is satisfied that *wednesbury* principles are violated and when such conclusion is reached, the Court has normally to remit the matter to the Administrator for fresh decision as to the quantum of punishment and only in extreme and rare cases where there has been long delay in the time taken during the disciplinary proceedings and in the time taken in the courts, then the Court substitutes its own view on the quantum of punishment. The case in *Chaman Lal* turns on its own facts and there is neither law nor principle enunciated in the judgment to apply

as a rule.

16. With all these aspects kept in view, I do not find any serious infirmity or lacuna in the award of the Labour Court which has considered the case of the petitioner and returned suitable findings after appreciation of evidence. The Labour Court has committed no error in discarding the testimony of account holder-customers in question deposing as witnesses for the workman before the Enquiry Officer attempting to exculpate the workman and free him of the charges. The Court has rightly observed that oral evidence contrary to the documentary evidence has not to be believed. This was a case dependent for proof of misconduct on documentary evidence and entries in the Saving Bank Accounts, Passbooks and Ledger Folios etc. The workman admitted the entries made by him by saying in defence that these entries were under bona fide mistake. This was over simplification of the misconduct. Such acts have serious propensities which when made public a Bank might lose its reputation and confidence in the investing public not to continue employment. It was a case of misappropriation. Even if it is classified as temporary misappropriation or temporary embezzlement both are bad enough. The workman, therefore, cannot be absolved simply by saying that the entries were made in good faith and thus were bona fide mistakes. In the opinion of the Labour Court, no leniency can be shown to the workman. Once the misconduct is proved in the enquiry conducted by an employer punishment imposed cannot be interfered with by the tribunal except in cases where the punishment is so harsh as to suggest victimisation.

17. I also wonder what sort of evidence other than the oral evidence on record, the workman might have led, had the Labour Court permitted the workman to lead the evidence by way of Section 11A of the

Act. It was not the case of the petitioner that there was other documentary evidence on record which was in his favour and which has not seen the light of the day on the file of the Labour Court but is absolutely essential to tilt the case firmly in his favour. Therefore, the argument based on Section 11A of the Act is illusory and a last ditch effort to come out of the situation. This case has not troubled my conscience for a moment to interfere in the award of the Labour Court on principles of disproportionate punishment to the gravity of the misconduct and I would, therefore, dismiss this petition as the impugned award does not suffer from errors apparent on the face of record.

18. For the foregoing reasons, I find no merit in this petition which is accordingly dismissed.

6.4.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes