

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24114 of 2011

Date of Decision: 1.05.2017

Ajit Singh

... Petitioner

Versus

Presiding Officer, Central Govt. Industrial Tribunal
cum Labour Court I, Chandigarh & anr.

... Respondents

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

Present: Mr. Raj Kaushik, Advocate,
for the petitioner.

Mr. Vikas Chatrath, Advocate, and
Ms. Neeru Thakur, Advocate,
for respondent No.2.

RAJIV NARAIN RAINA, J.(Oral)

This is a writ against the award of the labour court dismissing the reference. The facts are intertwined with misconduct and criminal offence on the same set of allegations. The trial has ended in acquittal. The departmental proceedings have terminated in punishment order .

The acquittal in the criminal case registered against the petitioner and one Mange Ram, Assistant and Head Cashier respectively employed in the State Bank of India at the relevant time had ended in a compromise Ex.C-I and the amount defalcated was paid to the complainant party customer of the Bank and the offence stood compounded by the Judicial Magistrate 1st Class, Fatehabad by order dated 11.3.2000 while applying the law indicated by the Supreme Court in ruling Central Bureau of Investigation SPE SIU (X), New Delhi v. Duncan Agro Industries Ltd. Calcutta, 1996 (3) RCR (Criminal) 60 : (1996) 5 SCC 591.

Mr. Chatrath appearing for the Bank draws the attention of the

Court to the findings of the Enquiry officer on Charge No.1 in the departmental inquiry conducted against the petitioner and Mange Ram. After the criminal case came to an end on compromise entered before the trial court, the manner in which it was arrived at is relevant, it is revealed from the following extract placed at Annex P-4 and is reproduced as part of the departmental enquiry report for better appreciation of the case:-

“From the perusal of complaint lodged by Sh. Satyawar, the complainant on 22.6.99, the observations made by the Hon'ble Addl. Sessions Judge, Hissar Sh. B.M. Bedi on 12.7.99 while granting anticipatory bail that payment has been made to the complainant after registration of case (which has not been contested by the accused at the material time) and further more the compromise entered into by the accused with the complainant and the judgment given by Hon'ble Sh. Gopal Krishan, Judicial Magistrate, Ist Class, Fatehabad on 11.3.2000 thereby granting permission for compounding the offence under Section 320 Cr.P.C, taking cognizance of the voluntarily written compromise of the parties and the written statement given by Sh. Mange Ram that payment of cheque in question was made by Sh. Ajit Singh after filing of FIR, all the factors go on to prove that payment of Cheque No.119281 for Rs. 28,440/- dt. 22.6.99 was not made at the material time but afterwards. Hence Charge no.1 is proved.”

From there it is revealed that while granting anticipatory bail, payment was made by the accused to the complainant of a sum of ₹ 28,440/- vide Cheque No.119281 dated 22.6.99 but that restitution of money was not made at the material time but much afterwards while facing criminal trial and

the prospect of conviction. These facts clearly go to prove to some degree the involvement and the culpability to the extent and point of the trial which had not by then reached culmination because of the compromise and compounding of the offence. Besides, on Charge No.2 the enquiry officer's findings (Annex P-5) prove civil misconduct committed by the petitioner Ajit Singh admitting his guilt in writing in his written reply to the show cause/charge sheet, which led to the registration of the FIR by the police.

The Labour Court has applied its mind to the facts and held that merely because the criminal trial has led to acquittal that does not mean that two charges of misconduct could not be proved by independent evidence in a domestic enquiry of the charge levelled against the workman.

The Labour Court has examined Charge No. 2 rather thoroughly and held that it was not proved against the workman since the receipts filed by the petitioner showed that every transaction was documented under the authority of the superior officers. Accordingly, the award was based on the gravity of Charge No.1 which was proved in the departmental proceedings and I have no reason to disagree with the reasoning in the award of the Tribunal dated 27.10.2010 refusing to interfere with the imposition of punishment of bringing down the pay of the petitioner Ajit Singh by two stages in the scale of pay. The reference has been answered against the workman for good and sufficient reasons.

As far as quantum of punishment is concerned, it does not shock the conscience of the Court as excessively disproportionate to the gravamen of Charge No.1 in view of the seriousness of the misconduct what I may say was definitely temporary embezzlement. In any case, the intention to commit offence continues in spite of the order of the Criminal Court compromising

the matter.

Mr. Chatrath relies on the decision of Suresh Pathrella v. Oriental Bank of Commerce, (2007) 2 SCT 715, to urge that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against delinquent officer, since proof in a criminal case is beyond all reasonable doubt whereas in departmental proceeding is preponderance of probabilities. In para. 8 of the report Their Lordships of the Supreme Court observed as under:-

“8. In our view, the findings recorded by the learned Single Judge are fallacious. This Court has taken the view consistently that acquittal in a criminal case would be no bar for drawing up a disciplinary proceeding against the delinquent officer. It is well settled principle of law that the yardstick and standard of proof in a criminal case is different from the disciplinary proceeding. While the standard of proof in a criminal case is a proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities.

I, therefore, find no infirmity or fundamental legal flaw or an error apparent on the face of the record in the impugned award and would dismiss the petition.

The petition is dismissed.

1.05.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No