

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

Date of Decision: April 28, 2017

+ **W.P.(C) 14294/2004**

CANARA BANK

..... Petitioner

Through: Mr. Vaibhav Kalra and Mr. Jasbir
Bidhuri, Advocates with Mrs. Tanu
Goel, Manager

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Nikhil Malhotra and Mr.
Harman Singh, Advocates for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned Award of 22nd April, 2004 directs reinstatement of respondent-workman in service with continuity and all consequential benefits except back wages, upon finding that the dismissal of respondent was unjustified. Respondent-workman was working as Class-IV/Sub-staff with petitioner-Bank when his services were terminated on 5th December, 1989. Respondent was departmentally tried on the following charge: -

CHARGE

M/W Indo Burma Petroleum Ltd have been maintaining collection account without R.P.Road Branch, Dehradun. On 30.9.1988 a cheque for 63,606/- drawn on State Bank of India, Slapper, H.P.Branch was tendered by the party in their collection a/c. The cheque was sent for collection

under OSC No.1110 to the drawee bank. Till 30.12.1988 since the proceeds had not been received by our Dehradun Branch they had contacted SBI, Slapper to ascertain the fate of their OSC. In turn thereto the branch came to know that the proceeds of the cheque under OSC 1110 have already been remitted by them through their demand draft No.925181 dated 8.10.1988 for Rs.63,439/- drawn on SBI, Dehradun. On having taken up the matter with the SBI, Dehradun branch for obtaining a non payment certificate, it came to light that the said demand draft has already been paid by them on 17.10.1988 when presented in clearing.

On conclusion of the Inquiry, respondent was found guilty and his services were terminated on 5th December, 1989. It is a matter of record that respondent had unsuccessfully preferred a departmental appeal and thereafter, had sought Reference, which stands answered vide impugned Award. The Central Industrial Dispute Tribunal-cum-Labour Court (*hereinafter referred to as the Tribunal*) on the basis of evidence of petitioner's Manager and the evidence of respondent herein, has rendered the impugned Award.

The facts already noted in impugned Award need no reproduction as it is beyond challenge that domestic Inquiry was fairly and properly conducted by petitioner against respondent-workman. Pertinently, respondent had not disputed the fairness of the Inquiry before the Tribunal. While relying upon paragraph No. 19 of first Bipartite Settlement, the Tribunal has concluded as under: -

“I have already held above that in case of an offence if no step for prosecution of an employee is taken or even if it is taken employee may ultimately acquitted or after steps have been taken to prosecute an employee he is not put on

trial within a year of commission of the offence the employee cannot be dismissed even after he is found guilty and even if the management decided after inquiry not to continue him in service, the employee can only be terminated with three months pay and allowances in lieu of notice. Admittedly it was not done in the instant case. The disciplinary authority as well as the ..G failed to consider this aspect of the case. Therefore, the order of dismissal of the workman from the service of the bank cannot be legally sustained.

In view of the above discussion I find that the action of the Management of Canara bank in dismissing Sh. Anil Kumar Anand, workman from the services of the bank w.e.f. 5.12.1989 is not justified. It is absolutely illegally and arbitrary.”

To assail impugned Award, learned counsel for petitioner contends that Tribunal's reliance upon Clause 3 & 4 of paragraph No.19 of first Bipartite Settlement to hold that the termination of respondent's service, is misplaced for the reason that paragraph No.19.3 of afore-referred Settlement gives discretion to employer/ Management to have resort to the procedure as provided in paragraph No.19.3 and 19.4 or to resort to paragraph No.19.11 and 19.12 of the aforesaid Bipartite Settlement.

Petitioner's counsel submits that instead of resorting to paragraph No.19.3 & 19.4 of the aforesaid Bipartite Settlement, petitioner had resorted to paragraph No.19.11 & 19.12 of the aforesaid Bipartite Settlement and Inquiry was conducted in a fair manner and the punishment is justified in view of the evidence led. It is vehemently contended by petitioner's counsel in the chief examination, petitioner's witness has deposed in detail to prove the charge in the Inquiry and in the

cross-examination, petitioner's version of Inquiry being justified is not questioned and so, impugned Award deserves to be set aside and the punishment awarded to respondent deserves to be restored. It is further submitted by petitioner's counsel that after preliminary investigation, respondent had deposited the embezzled amount with the petitioner-Bank without any murmur and so, there is no basis whatsoever to hold that the Inquiry against him was unjustified. It is also submitted by petitioner's counsel that Tribunal's finding of dismissal of respondent from service being unjustified is not borne out from the evidence on record as petitioner was not permitted to lead full-fledged evidence on merits regarding the legality of the Inquiry conducted by petitioner. Thus, it is submitted that impugned Award be set aside.

On the contrary, learned counsel for respondent-workman supports impugned Award and submits that there is no palpable error in it and that the findings in the Award are duly supported by the evidence on record and so, this petition deserves dismissal.

Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that the issue of fairness of Inquiry was rightly not pressed by respondent as there is no basis to conclude that the domestic Inquiry was not fairly conducted. The findings of domestic Inquiry having not been questioned by the Tribunal while rendering the impugned Award. It is pertinent to note that petitioner had led evidence to justify the finding of guilt in the Inquiry conducted against respondent, but there is no cross-examination of petitioner's witness on the vital aspect by

respondent who was duly represented by Defence Assistant in the inquiry proceedings. In such a situation, the Tribunal was not justified in holding that the dismissal of respondent from service was unjustified. Merely because resort was not made by petitioner to paragraph No. 19.3 & 19.4 of the aforesaid Bipartite Settlement does not justify the afore-noted findings returned by the Tribunal. Petitioner had appropriately resorted to paragraph No. 19.11 & 19.12 of the aforesaid Bipartite Settlement and had properly conducted the Inquiry. It was not open to the Tribunal to have held that the dismissal of respondent from service was unjustified merely because resort to Clause 19.3 & 19.4 of the aforesaid Bipartite Settlement was not made as it was the discretion of petitioner to resort to either paragraph No. 19.3 and 19.4 or to 19.11 and 19.12 of aforesaid Settlement. The conduct of respondent-workman i.e. of depositing embezzled amount by him soon after preliminary inquiry, without protest, speaks for itself. Punishment of respondent's dismissal from service is commensurate with the misconduct committed.

In view of aforesaid, finding the impugned Award to be patently illegal, it is set aside and so, the dismissal of respondent from service is restored.

This petition is accordingly allowed while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

APRIL 28, 2017

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