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

+ **W.P.(C) 5294/2017**

CENTRAL BANK OF INDIA Petitioner
Through **Mr. Anuj Jain, Advocate**

versus

ANIL KUMAR Respondent
Through **Mr. Inder Jit Singh, Advocate**

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **29.08.2017**

W.P.(C) 5294/2017 & CM APPL. 22418/2017 (For stay)

1. It is submitted on behalf of the petitioner that he does not wish to file any rejoinder to the counter affidavit of the respondent.
2. Vide the present petition the petitioner assails the impugned orders dated 25.04.2017 and 05.06.2017 of the learned Presiding Officer, Central Government Industry Tribunal-cum-Labour Court-II, Karkardooma Courts, Delhi (hereinafter referred to as 'the Tribunal') in I.D. No.16/2009.
3. Submissions have been made on behalf of either side. The petitioner is aggrieved by the said orders inasmuch as the petitioner states that it has not got an opportunity to lead its evidence and its right to lead evidence had been closed vide orders dated 25.04.2017 and 05.06.2017.
4. It has been observed vide order dated 25.04.2017 to the effect that the first date for management evidence to prove the misconduct of workman,

i.e. respondent herein, was 20.06.2016 but none on behalf of the management, i.e. the present petitioner, turned up for filing of the affidavit of the management witness and the case was adjourned to 25.07.2016 in the interest of justice, on which date also a last opportunity was granted to the management to give evidence to prove the misconduct of the workman and the case was fixed for 23.08.2016. As per the order dated 25.04.2017 on that date an affidavit of a witness was filed by the management and the matter was fixed for 20.10.2016 for tendering of the affidavit of management witness (on the date 20.10.2016 as per the list of dates submitted on behalf of the petitioner on record, the learned Presiding Officer of the Tribunal was on leave).

5. As per the impugned order dated 25.04.2017, on 03.04.2017 the management i.e. the petitioner herein, again moved an application for substitution of an affidavit of management witness. It was thus observed vide the impugned order dated 25.04.2017 that delaying tactics were being adopted by the management to prolong the case which could not be tolerated in terms of the provisions of Rule 10-B of Industrial Disputes (Central) Rules, 1957 and the said application was, thus, rejected and it was directed that no further opportunity would be afforded to the management for remaining evidence as the management was a defaulting party and sufficient time for adducing evidence had already been awarded and the management evidence was closed.

6. Vide the impugned order dated 05.06.2017 in relation to an application of the management of Central Bank of India under Section 11(3)(A) of the Industrial Disputes Act, 1947 read with Section 15 of

Industrial Disputes (Central) Rules, 1957, it was observed to the effect that the Tribunal had already closed the management evidence vide a detailed order dated 25.04.2017 against which the management had not sought any remedy and thus, the order on the point of closing of the management evidence had become final and could not be set aside by the Tribunal concerned, and thus, the Tribunal had no option but to reject the application of the management moved on 23.05.2017 which was thus rejected and thereafter, the matter was fixed for 12.06.2017 for tendering of the affidavit and cross examination of the workman, if any and for arguments.

7. In reply to the specific Court query, the learned counsel for the petitioner management submits that the petitioner had conducted the cross examination of the workman i.e. the respondent herein.

8. Through the submissions made on behalf of the petitioner, it has been submitted that erroneously the affidavit that was filed on behalf of the petitioner on 20.02.2017 vide an application seeking to place on record the additional affidavit was of Mr.R.S. Sharma (Enquiry Officer) along with his additional evidence affidavit placed on record and that on 18.04.2017 when the present counsel, on being newly engaged, filed his authority letter and through proxy counsel had asked time to make proper submissions. However, the request was declined and the matter was adjourned for 25.04.2017 for orders on the application and in the meantime, the authorized representative of the management inspected the file and applied for certified copies which, however, were not received and the Authorized Representative of the management asked for some time to address the arguments on 25.04.2017, however, the same was declined. Thus, the

Authorized Representative of the management did not have any option left but to submit a small handwritten note/written submissions.

9. It is further submitted on behalf of the petitioner that an application dated 12.05.2017 was filed by the management on 23.05.2017 to provide an opportunity to the management to lead the evidence of Mr. Naveen Kumar (Manager posted at that time in the branch and conversant with the misconduct of the workman) along with his affidavit dated 12.05.2017 but the said affidavit was not taken on record and only the application was taken on record. It was, *inter alia*, submitted on behalf of the petitioner that MW2 Mr. Naveen Kumar sought to be examined by the petitioner management was also personally present on 23.05.2017. It has been submitted further on behalf of the petitioner that on the date 30.05.2017 when the matter was again taken up, MW2 Mr. Naveen Kumar was personally present, however, neither his affidavit was taken on record nor was his appearance marked.

10. The petitioner thus, *inter alia*, seeks an opportunity to lead evidence and seeks the setting aside of the impugned orders dated 25.04.2017 and 05.06.2017 passed by the Tribunal in I.D. No.16/2009.

11. The petition has been vehemently opposed by the learned counsel for the respondent submitting, *inter alia*, to the effect that the petitioner has been repeatedly adopting delaying tactics and it is apparent in the impugned orders dated 25.04.2017 and 05.06.2017 before the learned Tribunal inasmuch as there has been deliberate negligence on the part of the petitioner to pursue its case. It was also submitted on behalf of the respondent that as rightly observed vide the impugned order dated 25.04.2017 more than three opportunities cannot be granted in terms of

provisions of Rule 10-B of Industrial Disputes (Central) Rules, 1957 to the petitioner to lead its evidence.

12. All the submissions made in the application filed on behalf of the petitioner before the Tribunal appear to have been controverted by the respondent.

13. On a consideration of the rival submissions and the pleadings on record, taking into account the submission that was made on behalf of the petitioner that the witness who was sought to be examined by the petitioner erroneously has been put forth as being the Enquiry Officer whereas, the witness who was to be examined was one Mr. Naveen Kumar posted as the Manager at the relevant time in the concerned branch where the respondent workman is alleged to have committed embezzlement, and that the examination of an Enquiry Officer who conducted the enquiry would be a futile exercise, which contention is apparently correct, it is considered appropriate to grant the petitioner management only one single opportunity to lead evidence in the form of the testimony of the management witness Mr. Naveen Kumar, stated to be now posted as Chief Manager, Central Bank of India, Branch Guna, Madhya Pradesh.

14. However, in the interest of justice costs of Rs.5,000/- are directed to be paid by the petitioner to the respondent workman by way of a cheque in the name of the respondent workman on the date when the matter is taken up by the learned Tribunal. It has been submitted on behalf of the respondent workman that the learned Presiding Officer of the Tribunal has since demitted the office and there is no incumbent presently posted.

15. In view of the above, it is directed that the management witness MW2

Mr. Naveen Kumar shall remain present for his testimony and cross-examination on the date to be fixed by the learned Central Government Industry Tribunal-cum-Labour Court-II for such examination and the costs imposed today shall be paid to the respondent workman before the learned Tribunal on the date when the matter is taken up.

16. The present petition and CM No.22418/2017 (stay) stand disposed of accordingly.

ANU MALHOTRA, J

AUGUST 29, 2017

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