

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1614 of 2015
IN
Civil Writ Jurisdiction Case No. 19548 of 2012**

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Satish Rajak, Son of Late Ganga Rajak, Resident of 'Bhola Niketan'. Jai Mahavir Colony, Sandalpur, P.O.:- Mahendru, P.S.: Bahadurpur, District: Patna.

.... Respondent Appellant/s

Versus

1. The Central Government Industrial Tribunal No.1, Dhanbad (Jharkhand) through Union of India.
2. The Union of India through the Secretary, Ministry of Labour & Employment, New Delhi.
3. The Bank of India through its Zonal Manager, R. Block, Birchand Patel Marg, Patna - 8000001.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birju Prasad, Adv.

For the Respondent/s : Mr. Kumar Priya Ranjan, CGC

For the Respondent-Bank: Mr. Suresh Prasad Singh No.1, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 21-03-2018

Heard Mr. Birju Prasad, learned counsel appearing for the appellant, Mr. Suresh Prasad Singh No.1, learned counsel appearing for the Bank of India and Mr. Kumar Priya Ranjan, learned counsel appearing for the Union of India.

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from an order of the learned Single Judge passed in CWJC No.19548 of 2012 dated 13.1.2015, whereby the learned Single Judge has been pleased to set aside the award dated 17.7.2012 of the Presiding Officer,



Industrial Tribunal No.1, Dhanbad passed in I.D. Case No.1 of 2012, whereby the Bank was directed to reinstate the appellant with 50% back wages.

The facts briefly leading to the writ petition is that a charge-sheet was served on the appellant, a peon with the respondent bank, a copy of which is placed at Annexure 3 and charges him on 3 counts, namely:

- (1) Accepting Rs.5,600/- as bribe for pursuing the loan application of the complainant Dhananjay Thakur;
- (2) Misusing the Credit-Card facility; and
- (3) Non-payment of Star Mortgage Loan.

After holding enquiry the Enquiry Officer submitted his report, a copy of which is at Annexure 4 to the writ petition and while charge nos.1 and 2 was found proved, the charge no.3 was partially upheld.

The Disciplinary Authority after taking note of the materials on record and the opinion of the Enquiry Officer imposed the punishment of compulsory retirement after protecting the post-retiral benefits of the appellant and which order of the Disciplinary Authority has been upheld by the Appellate Authority. Feeling aggrieved the appellant questioned the same before the Industrial Tribunal No.1, Dhanbad and vide award dated 17.7.2012 passed in



I.D. Case No.1 of 2012, the Presiding Officer, Industrial Tribunal No.1, Dhanbad quashed the punishment order and directed for reinstatement of the appellant with 50% back wages.

Feeling aggrieved that the Bank came before this Court in CWJC No.19548 of 2012 and which has been allowed by the judgment and order impugned and it is now the turn of the workman as a respondent in the writ petition to question the order passed by the learned Single Judge in this intra Court appeal.

We have heard learned counsel for the parties and we have perused the records. We do not intend to go into exhaustive deep down investigation into the materials accompanying the charges and the reasons would reflect in our opinion. Even if we are satisfied that charge nos.2 and 3 would not warrant an extreme punishment of the sorts, certainly the facts accompanying charge no.1 is serious.

A plea was taken by Mr. Birju Prasad, learned counsel appearing for the appellant-respondent that the appellant has been made an escapegoat for even though the complainant had retracted from his complaint by filing an affidavit but this was disbelieved by the Disciplinary Authority as an afterthought. According to Mr. Prasad it is in order to protect the Chief Manager, Rajendra Nagar Branch who was at the centre of the things that the appellant has



been saddled with the impugned punishment. He further submits that the opinion of the Disciplinary Authority upholding the view of the Enquiry Officer is perverse for it is not supported by the materials on record rather the materials on record do support the appellant of being made an escapegoat.

It is in compliance of the order of this Court that Mr. Singh, learned counsel appearing for the Bank has produced the records of the proceedings to submit that there were 3 evidences which were led by the department in support of the charge of acceptance of bribe which were marked exhibits 'ME-4', 'ME9' and 'ME-10'. He submits that 'ME-4' is the complaint made by the complainant Dhananjay Thakur before the Chief Manager, Rajendra Nagar Branch on 18.9.2009; the written submission filed by the complainant before the Enquiry Officer received on 10.8.2010 was marked as 'ME-9' and the 3rd evidence is an audio cassette recording conversation in between the complainant and the appellant which was marked as 'ME-10'. In reference to these exhibits it was submitted that a specific statement has been made by the complainant that he handed over Rs.5,600/- to the appellant for pursuing his loan application which was given in installments.

Mr. Singh has next referred to the evidence of the complainant to submit that when confronted with these 3 evidences,



the complainant accepted its filing as well as its contents. He thus submits that once the allegation of handing over of Rs.5,600/- has been endorsed by the complainant during the course of enquiry and who has not been cross-examined on such specific statement by the appellant then no further evidence was required to be led on this allegation and the Bank has been lenient in protecting the post-retiral benefits of the appellant even while imposing punishment of compulsory retirement.

Learned counsel has referred to the following judgments of the Supreme Court to support that even though a limited jurisdiction is conferred on the Tribunal under section 11-A of the Industrial Disputes Act, 1947, yet the Tribunal has travelled beyond its jurisdiction to enter into the sufficiency of evidence which is clearly without jurisdiction:

- (1) (2005) 3 SCC 134 (Mahindra & Mahindra Ltd. Vs. N.B. Narawade);**
- (2) (2005) 3 SCC 401 (M.P. Electricity Board vs. Jagdish Chandra Sharma);**
- (3) AIR 2006 SC 2208: 2006 AIR SCW 2801 (General Secretary, South Indian Cashew Factories Workers Union vs. Managing Director, Kerala State Cashew Development Corporation Limited).**



Mr. Prasad though has laboured hard to again canvass his arguments that the appellant, at the bottom of hierarchy has been singled out but the evidence on record are serious reflection of the misconduct.

As we have observed, even if this Court would be persuaded to condone the alleged charge nos.2 and 3 which certainly would not call for an extreme action, charge no.1 is too serious for being ignored. For the purpose we are persuaded to look into the 3 documents/evidences which go to the root of the matter and whose veracity has not been doubted. The first of such document is 'ME-4' which is the complaint filed by the complainant Dhananjay Thakur dated 18.9.2009 addressed to the Branch Manager, Rajendra Nagar Branch and categorically charges the Branch Manager of demanding bribe through the appellant. It is this part of the complaint made against the Branch Manager attributing the delay in processing loan application for such reason, which led to the proceeding in question. The situation became worse for the appellant because even before the Enquiry Officer the complainant admitted that the appellant demanded Rs.5,600/- for processing the loan application which statement is present at paragraphs 8, 9 and 10 of the written submission filed by the complainant before the Enquiry Officer marked 'ME-9'. The 3rd



evidence against the appellant is 'ME-10' which is an audio cassette recording conversation in between the appellant and the complainant which again confirms handing over of Rs.5,600/- to the appellant.

We have carefully examined the records of the proceedings and the specific stand of the complainant of giving Rs.5,600/- to the appellant has neither been explained by him nor has he confronted the complainant on this allegation by way of cross examination. On the contrary when asked by the Presenting Officer during the examination-in-chief the complainant has proved 'ME-4', 'ME-9' and 'ME-10'. The evidence of the complainant as MW-6 also confirms that the contents of 'ME-4' and ME-9 was read over to him and whereupon he accepted that the statements made therein were absolutely correct. The evidence recorded on 16.10.2012 at its concluding portion again mentions that when confronted about the date of handing over of the money, the complainant as MW-6 has mentioned that he does not remember the date but he handed over the money to the appellant. In our opinion these uncontested evidences are enough to uphold the charge because the appellant did not choose to cross examine the complainant on these statements.

In view of the confirmation of the allegation by the



complainant on the charge of handing over of the money to the appellant which charge has not been rebutted with cogent evidence, in our opinion the Bank could not have been more lenient than as present, where even while ordering compulsory retirement for the appellant, the Bank has protected his superannuation benefits. The opinion of the learned Single Judge in interfering with the award of the tribunal in view of the clinching evidence on record, requires no interference rather is resting on well settled principles regulating the issue.

The Letters Patent Appeal is accordingly dismissed.

Let the records of the disciplinary proceeding produced by Mr. Singh, learned counsel appearing for the Bank be returned to him.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
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