

**In the High Court of Punjab and Haryana, at Chandigarh**

**Civil Writ Petition No. 9049 of 2015**

**Date of Decision: 18.07.2018**

Taranbir Singh

... Petitioner(s)

Versus

The General Manager, Northern Zone Bank of Baroda, Zonal Office, New  
Delhi and Another

... Respondent(s)

**CORAM: Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. J.S.Lalli, Advocate  
for the petitioner(s).

Mr. G.S.Ahluwalia, Advocate  
for respondent No.1.

**Shekher Dhawan, J.**

Present writ petition is challenge to the award dated 07.11.2014 (Annexure P17), passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh (hereinafter referred to as “learned Tribunal”), whereby the reference was decided against the petitioner.

Facts relevant for the purpose of decision of present petition that petitioner was appointed by respondent No.1-Bank on 13.02.1983 at Delhi. In June, 2000, some of the relatives of petitioner-workman made complaint against him to the Senior Superintendent of Police, Ludhiana, which was duly investigated and the same was dropped. As per petition, the workman never used the name of the Bank or misused his official position.

There was no financial loss to the Bank because of conduct of petitioner. However, the workman was removed from service on 11.08.2001.

As per petitioner, he was charge-sheeted on 14.05.2001 and departmental enquiry was conducted. Meanwhile, the management issued a circular dated 14.12.2000 calling for all the employees for seeking voluntary retirement. The workman applied under the said scheme for voluntary retirement vide application dated 14.02.2001, but the same was rejected by the management on 25.04.2001. Petitioner filed an appeal against the said decision of the management refusing voluntary retirement to him. However, the representative of the Union had given an assurance to the workman that his voluntary retirement could be considered on the conclusion of the departmental enquiry. On that ground, petitioner did not contest the enquiry proceedings and the same were concluded in few minutes. The Enquiry Officer gave his finding holding the charges to be proved. The Disciplinary Authority awarded the punishment of removal from service without disqualification for future employment on 27.06.2001. The appeal of workman was dismissed. As per petitioner-workman, he had accepted the charges on the assurance that he would be allowed voluntary retirement on the conclusion of departmental enquiry.

The management came with the plea that petitioner was issued charge sheet containing several charges that petitioner was running an investment company and thereby causing loss to the management. Petitioner-workman also issued seven cheques drawn on his account to third parties and subsequently gave instructions for stop payment indicating that petitioner was involved in financial dealings with various persons. On these

charges, enquiry was conducted and petitioner-workman had confessed his guilt. The workman admitted all the charges without any pressure or coercion by writing on the charge sheet itself on 22.05.2001, which is reproduced as under:-

*“I hereby accept all the charges levied vide charge sheet No. PB:PD:STF661/1358 dated 14.05.2001. I am accepting the charges without any pressure, fear, commitment. I am accepting the charges of my own having full read and understood the same.*

Thereafter, personal hearing was given to the workman and the punishment order was passed. Petitioner-workman preferred an appeal and the same was also dismissed.

On these facts, reference was made to the learned Tribunal, which pronounced the impugned award against the workman holding that the enquiry was conducted and petitioner had confessed his guilt and as such there was no ground to interfere in the said punishment order and the order passed by the learned Appellate Authority.

At the time of arguments, learned counsel for the petitioner contended that the workman had not contested the enquiry proceedings as he had applied for voluntary retirement because of his compelling circumstances and he was under the impression that he would be granted voluntary retirement and that is why he had given in writing on 22.05.2001 before the Enquiry Officer admitting his guilt. But the management passed order of punishment which is contrary to the understanding given to him.

Even the appeal was decided against him without considering all these facts.

Even the learned Tribunal has not considered all these facts while pronouncing the impugned award.

While arguing on this point, learned counsel for the respondent-management contended that there are no grounds for coming to the conclusion that any impression or commitment was given to the workman that his voluntary retirement would be accepted, rather he had confessed his guilt on 22.05.2001 as he had no defence to lead. The Enquiry Officer had submitted his report and enquiry was fair and proper which was duly associated by the workman. Thereafter, an opportunity of hearing was given to the workman and on completion of disciplinary proceedings, punishment order was passed. Appeal, filed by the workman, was dismissed by the Appellate Authority. Even the learned Tribunal also considered all these aspects and pronounced the impugned award against the workman and present petition is without any merits. However, learned counsel for the respondent-management fairly conceded that it was not a case of embezzlement or causing loss to the respondent-management.

Taking all the facts into consideration, whereby charges levelled against the petitioner have not been denied by him, there is absolutely no ground or reason to come to the conclusion that any commitment or undertaking was given by the management to accept the charge and to pass the order of voluntary retirement. However, the management is certainly bound to consider all the relevant facts at the time of passing of punishment order. The management/employer is bound to consider the length of service and conduct of the workman whether he was involved in any misconduct or misappropriation of funds on some earlier date. As per the provisions of

Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), the learned Tribunal is well within its powers to look into all these aspects, if the management has not considered all these aspects. For ready reference, Section 11-A of the Act is reproduced as under:-

*“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”*

But in the present case, learned Tribunal has not considered all these aspects at all because petitioner-workman had served the management right from

13.02.1983 till 11.08.2001. Needless to mention that petitioner-workman had already applied for voluntary retirement. The conduct of petitioner is not such that he was involved in any case of misconduct or misappropriation or moral turpitude in his long service tenure. But the management has not considered all these aspect while passing punishment order or while deciding the appeal. Even this aspect has not been duly considered by the learned Tribunal.

As per the view taken by the Hon'ble Division Bench of this Court in ***Mangat Rai v. Pepsu Road Transport Corporation and Another*** **1998(1) S.C.T. 771**, the scope of Section 11-A of the Act has been considered and following principles have been laid down:

*“An analysis of these decisions shows that the Supreme Court and the High Courts have unequivocally recognized the legislative authorization to the Labour Courts/Tribunals under Section 11-A the Act to examine the issue relating to fairness of the departmental/domestic enquiry, the merits of the findings recorded during the course of such enquiry as well as the issue relating to punishment. The Courts have consistently held that in appropriate cases the Labour Court and the Tribunal can substitute the punishment awarded by the employer with a lesser punishment, if on an objective analysis of the facts of a given case it comes to the conclusion that the punishment awarded by the employer is unjust or shockingly disproportionate or unduly harsh. In what circumstances the Labour Court or Tribunal may interfere, with the punishment*

*awarded by the employer depends on the facts of the particular case and no hard and fast rule can be laid down.”*

Again the same matter was considered before the Hon'ble Division Bench of this Court in ***Geeta Ram v. Presiding Officer, Labour Court, Bathinda 1998(3) S.C.T. 115***, wherein it was observed as under:-

*“If we examine the impugned award in the light of the principles laid down by the Supreme Court and by this Court on the ambit and scope of Section 11-A, it can reasonably be said that the Labour Court has failed to exercise its jurisdiction under Section 11-A. The learned Presiding Officer has not at all considered whether the punishment of dismissal imposed by the Government is just or not and whether any other punishment can meet the ends of justice. The past record of the petitioner, the length of his service and the impact of his alleged misconduct on the service have not at all been taken into consideration while upholding the dismissal of the petitioner from service.”*

In view of the above views taken by the Hon'ble Division Bench in ***Mangat Rai's and Geeta Ram's cases (supra)***, this Court holds that the impugned award is vitiated due to failure of the learned Tribunal to exercise the jurisdiction vested in it under Section 11-A of the Act and also on the ground that it suffers from error of law apparent on the fact of it.

Similar matter was also before the Delhi High Court in ***K.L.Bhasin v. Punjab National Bank & Another (W.P.(C) No. 7487/2000, decided on 23.03.2017)***, wherein major penalty of dismissal from service

was awarded.

Such a matter was also before the Hon'ble Apex Court in *State of Tripura and Others v. Priyabandhu Chakraborty 1997(11) SCC 405*, wherein it was held that in suitable cases, instead of dismissal from service, penalty of compulsory retirement or lesser punishment can be imposed on the workman.

This Court, however, considered the charges that have been found established against the workman. Having regard to the facts that the workman had already put in more than 17 years of service on the date when the order of removal was passed, this Court is of the view that it is a fit case in which instead of removal from service, penalty of compulsory retirement may be imposed on the workman with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.

The present writ petition is, therefore, allowed upholding the disciplinary proceedings against the workman with the modification that instead of penalty of removal from service, penalty of compulsory retirement from service is imposed on him with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.

(Shekher Dhawan)  
Judge

July 18, 2018  
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No