VIMAL KUMAR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 15.03.2019

CWP No.773 of 2019

UCO Bank

...Petitioner

Vs.

Presiding Officer, Central Government Industrial Tribunal -cum- Labour Court-II, Chandigarh & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Nonish Kumar, Advocate, for the petitioner.

Mr. D.R.Sharma, Advocate, for caveator-respondent No.2.

RAJIV NARAIN RAINA, J.

1. The issue referred for determination by the Central Government Industrial Tribunal -cum- Labour Court-II, Chandigarh (for short 'the Tribunal') in ID No.212 of 2011 registered on 25.08.2011, was; whether the action of the Bank in imposing the punishment of compulsory retirement with superannuation benefits upon workman – Rakesh Duggal w.e.f. 17.06.2010 is just, valid and legal? And what relief is Rakesh Duggal entitled to on a dispute raised by the UCO Bank Employees' Union espousing his cause?

2. The Tribunal in its detailed award dated 29.08.2018 on the evidence reached the conclusion that the workman – Rakesh Duggal is entitled to reinstatement in service with full back wages from the date of

passing of the order of compulsory retirement i.e. 17.06.2010. The award is under attack by the Bank, as not sustainable. Parties have been heard at length.

3. The incident relates to 10.08.2009. An old customer of the petitioning Bank, namely, Sukhdev Singh moved a complaint against workman – Rakesh Duggal on 01.09.2009 stating that he visited the Branch on 10.08.2009 to withdraw money from his account. Rakesh Duggal was Head Cashier posted in the Bank. There is no dispute that at that at that relevant time computer service was out of order and bank entries had to be made manually. Duggal filled out Sukhdev Singh's form in English and left blank the column of amount and after obtaining his signatures on the form handed him over the demanded sum of ₹28,000/-. He kept the passbook with himself to complete the same later. The workman did not meet and handover the passbook. On 01.09.2009, Sukhdev Singh again visited the Bank and came to know that a sum of ₹1,78,000/- had been withdrawn from his account, whereby he alleged fraud of ₹1,50,000/- has been committed with him. This is what led to the complaint against Duggal. The services of Duggal were placed under suspension vide order dated 10.09.2009 and a charge-sheet followed on 09.11.2009. An enquiry was conducted and report dated 01.05.2010 was submitted to the punishing authority. The Enquiry Officer did not find the first charge proved, the second yes. Nevertheless the disciplinary authority did not agree with the report of the Enquiry Officer.

4. In the charge-sheet, it is alleged that ₹28,000/- could not be debited in the system due to connectivity failure, as such, said withdrawal could not be debited and hence the workman – Rakesh Duggal retained this

withdrawal along with passbook and collected a sum of ₹28,000/- from Mr. Karam Singh, Paying Cashier on account of payment to be made to Sukhdev Singh towards his withdrawal of date. Sukhdev Singh took his amount and left the branch and after a while Rakesh Duggal is alleged to have collected ₹1,50,000/- from Mr. Karam Singh towards aforesaid withdrawal of Sukhdev Singh and this amount he retained with himself.

5. Later on, when connectivity was restored, it is alleged that Duggal filled in the amount column in figures as ₹1,78,000/- and gave it to the Counter Clerk, who posted the said withdrawal in the system. Respondent- Rakesh Duggal is said to have passed the said withdrawn himself, as the first signatory. Accordingly, Rakesh Duggal was charged; firstly, for willful damage to the property of Bank as per Clause 5(d) of the Memorandum of Settlement dated 10.04.2002 and, secondly, for doing an act prejudicial to the interests of the Bank as per Clause 5(j) of the said Settlement dated 10.04.2002.

6. The defence of Rakesh Duggal to the charges was that he borrowed a sum of ₹1,50,000/- from Sukhdev Singh on 10.08.2009. He neither inflated the amount on withdrawal form nor is there any cutting on it. His statement is supported by the fact also that Sukhdev Singh again visited the branch on 21.08.2009 and raised a loan of ₹55,000/- against his FDR, the documents and vouchers etc. of which were prepared by Duggal and he also passed the vouchers as first signatory. Duggal contended that had he inflated the amount of the withdrawal or acted in the manner as has been alleged in the charge-sheet and not borrowed money from Sukhdev Singh, the latter would have raised the alarm on 21.08.2009 itself and would have lodged the

complaint on the same day. What prompted Sukhdev Singh to lodge complaint containing contrary facts on 01.09.2009 in his absence (on leave) raises a question mark. It is an admitted fact that Sukhdev Singh was not examined by the Bank in the enquiry. His presence was central to the charge since he was the complainant. Had Sukhdev Singh appeared as a witness Duggal would have had an opportunity to cross-examined him but the same was denied to the defence and to his prejudice.

7. On the other hand, the Paying Cashier, namely, Karam Singh appeared in the enquiry and deposed that he saw the withdrawal form duly/fully filled up in the presence of Sukhdev Singh. In short, Rakesh Duggal case was that he had borrowed money and returned the same to Sukhdev Singh.

8. The Enquiry Officer has recorded in his report that Sukhdev Singh did not appear despite reminders and instead sent a letter stating that he has no complaint against Rakesh Duggal. In his letter dated 04.02.2010, he stated that previously on 08.09.2009, he had already withdrawn his complaint against Rakesh Dugal in the presence of Village Panchayat.

9. The punishing authority by his order dated 29.05.2010 on the subject of personal hearing and proportionality in the matter of charge-sheet dated 09.11.2009 found himself disinclined to agree to the conclusion arrived at by the Enquiry Officer that Charge No.1 was not proved on the basis of the fact that the complainant had withdrawn his complaint saying that he received back his money and the fact that the complainant did not cause his appearance during the enquiry proceedings there was something remiss. The reason for differing with the findings of the Enquiry Officer was

that Sukhdev Singh made a complaint of fraudulent withdrawal of money from his account and subsequently he wanted to close the matter by giving in writing that he received back his money and he has no complaint against Duggal. But the refund of money in no way dilutes the misconduct, reasoned the punishing authority. It is a sort of finding the middle ground to close the matter and the truth remains the same as alleged in the charge-sheet. On the strength of such reasoning, the disciplinary authority has held both the charges proved. In this disagreement note itself, the disciplinary authority has proposed infliction of penalty of 'Dismissal from Bank's services' in terms of Clause 6(a) of the Memorandum of Settlement dated 10.04.2002 because charges are proved.

10. After proposing dismissal, a date was fixed for Rakesh Duggal to be heard on 03.06.2010 for offering personal hearing on the proposed penalty. It is recorded in the last line of the letter sent to Duggal that a copy of the enquiry report dated 01.05.2010 is enclosed for perusal.

11. On 16.06.2010, Rakesh Duggal appeared before the disciplinary authority and the final order was passed on 17.06.2010 retiring the workman/respondent No.2 from service compulsorily. It has been recorded on the last but one page of the order that the enquiry report was forwarded along with observations on 29.05.2010. But the evidence of the management itself is to the contrary with management's witness admitting that the report was not sent to invite objections.

12. By order dated 10.10.2014, the Tribunal passed an interim award holding that the part of the enquiry report in which some of the charges have been proved and the report dated 17.06.2010 deserves to be set

aside with opportunity to the management to prove charges against the workman before the Tribunal. The Tribunal recorded in its order that it was necessary to examine Sukhdev Singh to prove the charges to the effect that the amount was kept by Rakesh Duggal fraudulently. In the absence of the statement of Sukhdev Singh which was to be tested on the anvil of cross-examination, the finding recorded by the disciplinary authority on conjectures and surmises is not sustainable. The disciplinary authority based its finding on the deposit of the amount by the workman and since the workman admitted that he received ₹1,50,000/- from Sukhdev Singh as loan and if he deposited the same, no adverse inference can be drawn. The second reason, which had not been sustained in the impugned order of the disciplinary authority, was that the disciplinary authority has relied on a compromise deed where the workman is said to have admitted his fault. The copy of the compromise deed was on file and on perusal to the mind of the Court showed that Rakesh Duggal was not party to the compromise deed and, therefore, recitals contained therein are of no consequence so far as rights of workman are concerned. It is simply guess work of the disciplinary authority that Sukhdev Singh was "managed" and was not allowed to join the enquiry proceedings by the workman. This is how the enquiry report stood obliterated with right to management to lead evidence to prove the charges for the first time before the Tribunal. Opportunity under Section 11-A of the Act was given to the Bank to prove charges against the delinquent. The order was not challenged by the Bank. This is how the second leg of the adjudication started on merits.

13. The Tribunal by an elaborate order has discussed in detail and has analyzed the evidence produced on record and the lack of it to bring

home the charge of misconduct. It has understood the issues falling for determination, which can be summed up as follows:

(i) First & foremost action has been faulted since the management was required to examine before the Tribunal the Enquiry officer or any other employee who was associated with the enquiry proceedings. The management did not examine the Enquiry Officer, namely, Shri R.K.Nagpal, Senior Manager, UCO Bank, Ludhiana. The Bank examined only MWs Sham Babu and Daljit Singh. MW Sham Babu was the presenting officer in the domestic enquiry. The Tribunal has held that Sham Babu was not an independent witness to prove the enquiry proceedings, as he was not expected to become a persecutor being only a prosecutor. MW Sham Babu has admitted in his cross-examination that on 10.08.2009, on the date of incident, he was not posted in the concerned branch. In fact, one Daljit Singh was posted as Branch Manager. He admitted that he was neither enquiry officer nor disciplinary/appellate authority in the case. Thus, the Tribunal has held the enquiry report to be not proved.

(ii) While dealing with the Management's contention that no prejudice has been caused to the workman for non-examination of the enquiry officer, the Tribunal read the pleadings and found that the workman had specifically stated as well as deposed in the witness-box before the Tribunal that he was not provided copy of the enquiry report by the management. The admitted position on the testimony of witnesses Sham Babu and Daljit Singh was that the latter showed ignorance that the copy of the enquiry report was sent to the workman along with the proposed punishment, while Sham Babu admitted that enquiry report had been forwarded to the workman along with notice of proposed punishment and not prior thereto. This was a fatal flaw in the disciplinary proceedings and per se prejudice was caused by non-supply of the enquiry report. This cardinal principle of natural justice was breached. See Union of India & others Vs. Mohd. Ramzan Khan (SCI) 1991 (1) SCT 111.

(iii) The complaint of Sukhdev Singh itself on the basis of which charge-sheet was issued was not proved on record. Complainant Sukhdev Singh did not appear before the Enquiry Officer though he was cited as a witness in the enquiry proceedings. MW Sham Babu, who happened to be the presenting officer, could not tell who had scribed the complaint of Sukhdev Singh. He admitted in his cross-examination that Sukhdev Singh had been called to appear in the enquiry over the telephone, but could not recall his number. This version of MW Sham Babu suggests that formal notice of appearance was not at all issued to Sukhdev Singh in the enquiry proceedings.

This witness admitted that Sukhdev Singh had withdrawn his complaint in writing.

(iv) The view of the disciplinary authority that the whole thing was a managed affair is based on surmises. The Tribunal held that such views/findings of the disciplinary authority are not based on any evidence available on the record of enquiry proceedings inasmuch as in fact the complaint which formed basis of the charge-sheet against the workman was not at all proved before the Enquiry officer as the complainant Sukhdev Singh did not appear despite repeated requests. The Bank could have compelled appearance of Sukhdev Singh to support his complaint. MW Daljit Singh, who was the Branch Manager of the branch concerned at the relevant time, has stated in his cross-examination that Rakesh Duggal did not exercise the powers of Branch Head or Assistant Branch Head, but admitted that he himself had passed the payment for withdrawal of ₹1,78,000/-, as the withdrawal form was in order. It was he, who had returned the withdrawal form to Karam Singh (Paying Cashier) after passing necessary order. The amount was mentioned in figures and words in the withdrawal form. He deposed that no action was taken against Karam Singh. In these circumstances, the Tribunal concluded that the action of the disciplinary authority in substituting his own findings in respect of Charge No.1 appears to be simply based on assumptions and presumptions and are not based on evidence adduced in the enquiry proceedings and are, therefore, not sustainable.

(v) Moreover, the workman filed an application for production of some documents and the Tribunal by order dated 20.06.2018 had directed the Management to produce the same. The documents are as follows:

(a) Affidavit given by the complainant Sukhdev Singh, duly attested by Executive Magistrte, Ludhiana (dated 05.05.2010)

(b) The front & back side copy of Voucher of Sundry Creditors dated 03.09.2009 through which applicant workman deposited the amount of ₹1,50,000/- for depositing it in complainant's Sukhdev Singh account on 03.09.2009.

(c) Copy of Cash Scroll Register dated 03.09.2009.

(d) Copy of Dispatch register dated 17.06.2010 of Zonal Office vide which Disciplinary authority had claimed to have dispatched the final order of punishment to the applicant workman.

(e) Original copy of the complaint dated 01.09.2009 given by Sukhdev Singh, duly diarized and received by the then Manager, Daljit Singh.

Workman/respondent No.2 also gave reasons why those documents were necessary. He desired production of Voucher of Sundry Creditor dated 03.09.2009 to show narrations written by him on the reverse of the voucher.

Similarly, he desired production of Dispatch Register dated 17.06.2010 to show that in fact status quo order dated 17.06.2010 passed under Section 33-B of the Industrial Disputes Act, 1947 by the Conciliation Officer/Assistant Labour Commissioner, Chandigarh were received in the Bank, but the final punishment orders were purportedly dispatched without any dispatch number. However, Management failed to produce documents at Sr.No.(b), (c) & (d) on the ground that these documents are not traceable. The Tribunal held that these were important documents to find out the truth. Thus, it had no option, but to draw adverse inference against the management and to accept the version of the workman that enquiry report was not supplied to him prior to notice of imposition of penalty and, therefore, principles of natural justice were not adhered to during the proceedings before the disciplinary authority. The Tribunal correctly concluded that the proceedings before the disciplinary authority were in violation of principles of natural justice. This had caused prejudice to Rakesh Duggal and he was dealt with in an unfair manner. Accordingly, the Tribunal declared the punishment of compulsorily retirement from the Bank service as unjust and invalid.

(vi) Lastly, the Tribunal dealt with in detail on the residual question, whether Rakesh Duggal was entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It was not in dispute that workman was a regular and permanent employee of the Bank. The Tribunal read the law in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324, wherein the Supreme Court culled down from past case law that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The Tribunal applied the law on relief in Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat, (2010) 5 SCC 497. It also applied the law indicated by the Supreme Court in Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limited, (1979) 2 SCC 80 holding that relief of reinstatement with continuity of service can be granted when termination of service was found to be invalid. It would mean that the employer has taken away illegally the right to work of the employee contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. Plain common sense also dictates that the removal of an order terminating the services of workman must ordinarily lead to the reinstatement of the services of the workman with payment of back wages. The Tribunal culled out aa appropriate paragraph from the judgment and order of

Delhi High Court in Bholanath Lal & others Vs. Shree Om enterprises (P) Ltd., Manu/DE/1922/2018 while considering the question of illegal termination and reinstatement observing, as noticed and reproduced in para.22 of the award, as follows:

> "The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that that in the case of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

14. For these reasons, the reference has been answered in favour of the workman/respondent No.2 and against the management entitling the workman to reinstatement with full back wages from the date of the passing of the order of his compulsory retirement i.e. 17.06.2010.

15. Having heard Mr. Nonish Kumar, learned counsel appearing for the petitioner Bank and Mr. D.R.Sharma, learned counsel for the caveator/respondent No.2, I find no good reason to interfere with the well-reasoned award, which is based on sound principles of law and clear understanding of facts. This Court does not sit in appeal over the awards of industrial tribunals and its jurisdiction is well defined to examine in judicial review whether the Tribunal has committed any patent error apparent on the face of the record or has completely misread the evidence or refused to read the material evidence or the award suffers from perversity, illegality or irrationality as explained in Syed Yakoob Vs. K.S.Radhakrishnan, AIR 1964 SC 477. None of these defects is noticeable in the award. I would accordingly find no occasion to interfere and am inclined to dismiss the petition without any order as to costs. The award is maintained. Petition is dismissed.

16. Ordered accordingly.

15.03.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes/No*