**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No. 739 of 2019 (O&M)
Date of decision: 01.05.2019

UCO Bank

… Appellant

Versus

Presiding Officer, Central Government Industrial Tribunal Cum Labour Court-2, and another

… Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

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

ARUN PALLI, J.

This is an *intra Court* appeal under Clause-X of the Letters Patent, against an order and judgment dated 15.03.2019, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant against the award dated 29.08.2018, passed by the Industrial Tribunal, reinstating the respondent-workman with consequential benefits, has since been dismissed.

Facts that are required to be noticed are limited.

Respondent-workman was employed as Head Cashier with the Manghat Branch of the appellant-bank. Disciplinary proceedings were initiated against him upon a complaint made by one Sukhdev Singh: that he visited the branch on 10.08.2009, to withdraw some amount from his account and the respondent-workman filled the form for him in English, as the computer system was out of order and the transactions were being made manually, but the column in which the amount being withdrawn was to be filled was left blank. After obtaining his signatures upon the said form he was handed over the demanded sum of Rs.28,000/-. Sukhdev Singh happened to visit the branch again, on 01.09.2009, and only then he came to know that in fact not just Rs.28,000/- but a sum of Rs. 1,78,000/- were withdrawn from his account, thus, a fraud of Rs.1,50,000/- was committed with him. The charge against the respondent-workman was that owing to the connectivity failure Rs.28,000/- could not be debited in the system and the respondent-workman retained the withdrawal voucher along with the pass book of the complainant and after collecting Rs.28,000/- from Sh. Karam Singh (Paying Cashier), on account of payment to be made to Sukhdev Singh towards his withdrawal, handed over the said amount to Sukhdev Singh, who having collected the withdrawal left the branch whereafter, the respondent-workman further collected a sum of Rs.1,50,000/- from Sh. Karam Singh, towards withdrawal of Sukhdev Singh and retained the said amount. Later, when computer services and connectivity was restored, as per the case of the appellant bank, the respondent-workman filled the amount column in figures as Rs.1,78,000/- and handed over the withdrawal form/voucher to the Counter Clerk, who then posted the said withdrawal in the system. Further, he passed the said withdrawal himself as the first signatory. Thus, the respondent-workman was charged for willful damage to property of the bank as per clause-5(d) of the Memorandum of Settlement dated 10.04.2002, and secondly, for an act prejudicial to the interests of the bank in terms of clause-5(j) of the

Settlement.

In brief, the respondent-workman in his response to the charge-sheet maintained that in fact he had borrowed a sum of Rs.1,50,000/- from Sukhdev Singh on 10.08.2009. Neither did he inflate the amount on withdrawal form nor there were any interpolation on the vouchers. Rather, Sukhdev Singh visited the branch again on 21.08.2009, and raised a loan of Rs.55,000/- against his FDR and the necessary documents in this regard were prepared and filled by the respondent-workman. Hence, if the respondent-workman had indeed inflated the withdrawals or acted in the manner as alleged in the charge-sheet, he would have raised an alarm and complained against him on 21.08.2009 itself.

Upon conclusion of the inquiry proceedings, the Inquiry Officer, vide his report dated 01.05.2010, found that charge No.1, against the respondent-workman remained unproved, though charge No.2 as per clause 5(j) of the Settlement was established against him. However, the punishing authority found itself in disagreement with the conclusion recorded by the Inquiry Officer as regards charge No.1, and on observing that both the charges against the respondent-workman were proved, vide its order dated 17.06.2010, compulsorily retired the respondent-workman from bank's service with superannuation benefits.

Thus, being aggrieved, the respondent-workman raised an industrial dispute. The Tribunal rendered an interim award dated 10.10.2014, as regards validity and fairness of departmental inquiry and held that the conclusions arrived at by the disciplinary authority were not based on any evidence, and thus, were unsustainable. As a result, a part of the inquiry report in which some of the charges were held to have been proved against the respondent-workman as also the order of punishing authority dated 17.06.2010, were set aside. And the appellant bank was afforded opportunity to establish the mis-conduct of the respondent-workman by adducing evidence before the Tribunal itself.

And, eventually, vide an award dated 29.08.2018, assailed in the writ petition, the Labour Court concluded as the proceedings held by the disciplinary authority were in violation of the principle of natural justice and conducted in an unjust and unfair manner, the punishment inflicted upon the respondent-workman was invalid. Accordingly, the respondent-workman was re-instated with consequential benefits. That is how, aggrieved by the said award, the appellant approached this Court vide a writ petition, referred to above, which has since been dismissed. Thus, this appeal.

We have heard learned counsel for the appellant and perused the records.

Ex facie, upon a due and comprehensive consideration of the matter and material on record, the learned Single Judge affirmed the findings recorded by the Industrial Tribunal. It was concluded that appellant failed to examine the Inquiry Officer, R.K. Nagpal, Senior Manager, UCO Bank, Ludhiana, or any other employee who was associated with the inquiry before the Tribunal. Rather, the bank had examined one Sham Babu, who conceded in his cross-examination that on the fateful day i.e. on 10.08.2009, he was not posted in the concerned branch. The plea of the appellant that even if it had failed to examine the Inquiry Officer, no prejudice was caused to the respondent-workman, was also rejected. For, the specific case pleaded and proved by the respondent-workman was that he was never provided with a copy of the inquiry report. In fact, the testimony of the management witness namely Daljit Singh, revealed that he feigned ignorance if the copy of the inquiry report was served upon the respondent-workman along with the proposed punishment. Though, Sham Babu, another witness examined by the appellant conceded in his testimony that inquiry report was forwarded to the respondent-workman along with the notice of proposed punishment and not earlier. Thus, the lapse was fatal to the disciplinary proceedings, which *per se* caused prejudice to the respondent-workman. Significantly, the entire case of the appellant bank was predicated upon the complaint submitted by Sukhdev Singh, however, the bank failed to prove the same on record, for, complainant Sukhdev Singh did not appear before the Inquiry Officer. Sham Babu (MW), who happened to be the presenting officer failed to explain as to who scribed the complaint of Sukhdev Singh. Rather, he admitted in his deposition that Sukhdev Singh was called to appear in the inquiry on telephone, which suggests that no formal notice was served upon Sukhdev Singh to appear in the inquiry. Needless to assert that Sukhdev Singh was a crucial witness and it was imperative for the appellant bank to have examined him. Likewise, had Sukhdev Singh appeared as a witness, the respondent-workman would have had an opportunity to cross-examine him so as to enable the authorities to reach a just decision in the matter. And, in any case, Sukhdev Singh had withdrawn his complaint in writing on 08.09.2009, itself and rather conveyed that it was owing to some misunderstanding or misconception he complained against the respondent-workman, and thus, wanted the matter to be closed. The respondent-workman had borrowed Rs.1,50,000/- from Sukhdev Singh, which he subsequently redeposited through sundry creditors account. The observation recorded by the disciplinary authority that Sukhdev Singh was managed and, therefore, the affidavit furnished by him was of no relevance was also found to be erroneous being apparently conjectural and based on no evidence. Not just that cashier, Karam Singh, who appeared in the inquiry, testified in his deposition that he saw the withdrawal form which was duly and fully filled in the presence of Sukhdev Singh. Daljit Singh (MW) who happened to be the Branch Manager, for Branch Office, Manghat, on 10.08.2009, conceded in cross-examination that respondent-workman neither exercised the powers of Branch Head nor Assistant Branch Head, rather, he admitted that he himself passed the payment for withdrawal of Rs.1,78,000/-, for, the withdrawal form was in order. The matter has yet another dimension: during the pendency of the proceedings before the Tribunal, upon an application moved by the respondent-workman requiring the appellant bank to produce certain documents to prove his innocence, and the Tribunal vide order dated 20.06.2018, directed the appellant to produce those:-

"**(a) Affidavit given by the complainant Sukhdev Singh, duly attested by Executive Magistrate, 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 Rs.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."

Concededly, the appellant failed to produce the documents mentioned at serial No. **(b) (c) and (d)** as those were stated to be untraceable. It was in these circumstances, and the documents being vital to unveil the truth, the Industrial Tribunal was impelled to draw an adverse inference against the appellant bank. Likewise even, the learned Single Judge concluded:-

> **"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."

Upon being pointedly asked, learned counsel for the appellant failed to refer to anything on record to show if the conclusions recorded by the Tribunal as also the learned Single Judge were either contrary to the record or suffered from any material illegality. That being so, we too are dissuaded to interfere with the impugned order and judgment. Thus, the appeal being devoid of merit, is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

01.05.2019

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No