IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 29.10.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.22155 of 2016 and
W.M.P.Nos.14893 of 2018 and
W.M.P.No.1143 of 2020

Central Bank of India,
Rep. by its Senior Regional Manager -
Mr.Mayank Dinesh Shah
Regional Office,
No.48/49, Montieth Road,
Egmore, Chennai - 600 008. .... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal -
cum - Labour Court,
Chennai.

2.C.Sekar .... Respondents

Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.24 of 2015 and quash its Award dated 23.02.2016.

For Petitioner	:	Mr.S.Ravindran Senior Counsel For Mr.S.Bazeer Ahamed
For 1st Respondent	:	Court
For 2nd Respondent	:	Mr.Balan Haridas

ORDER

The prayer sought for in this writ petition is for a writ of certiorari calling for the records of the first respondent in I.D.No.24 of 2015 and quash the Award dated 23.02.2016.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows:

2.1. The second respondent joined as a Clerk at the petitioner Bank and after several years of service, he was lastly serving as Head Cashier. While so, a disciplinary proceedings was initiated against him by the petitioner Bank by issuance of charge memo dated 16.06.2010, where, seven charges had been framed against the second respondent. On serving the charge memo, an enquiry was conducted where reasonable opportunity was given to the second respondent and after the enquiry, the Enquiry Officer has given his report stating that, except Charge Nos. 2 and 7, other charges were proved. Thereafter, a second show cause notice was also given to the second respondent on 06.12.2012, for which, the second respondent had given his reply dated 16.01.2013. After considering the reply given to the second show cause notice, of course, after perusal of the report of the Enquiry Officer, the Disciplinary Authority of the petitioner Bank, by order dated 08.10.2013, inflicted the major punishment of dismissal of service against the second respondent.

2.2. Aggrieved over the same, the second respondent raised an industrial dispute in I.D.No.24 of 2015 on the file of the first respondent in the year 2015, where, claim statement was filed, counter and additional counter statement also on behalf of the petitioner Bank filed. The first respondent/Industrial Tribunal, having heard both sides and after having appreciated the evidence adduced on behalf of both sides, has passed the impugned award dated 23.02.2016, where, the first respondent/Tribunal has modified the punishment of dismissal from service inflicted on the second respondent into a compulsory retirement from service with superannuation benefits. Aggrieved over the said impugned award, the petitioner Bank filed this writ petition with the aforesaid prayer.

3.Heard Mr.S.Ravindran, learned Senior Counsel appearing for the petitioner Bank, who would submit that, originally seven charges were framed against the second respondent, out of which, five charges were proved, except Charge Nos.2 and 7. Therefore, punishment of dismissal of service was awarded by the Disciplinary Authority taking into account that, the proven charges against the second respondent are serious charges. Therefore, the said punishment of removal from service cannot be said to be a disproportionate one.

4.In this context, the learned Senior Counsel would further contend that, the Tribunal, out of the five charges, for which, punishment was awarded against the second respondent, has come to the conclusion that, Charge Nos.1, 3 and 4 alone were proved and Charges 5 and 6 were not proved. Insofar as the said conclusion arrived at by the Tribunal, the petitioner has not canvassed anything now. However, insofar as the proven charges viz., Charge Nos.1, 3 and 4 are concerned, the punishment awarded against the second respondent i.e., dismissal of service was well deserving and proportionate too and therefore, the said punishment of dismissal of service awarded against the second respondent, even in respect of the proven charges viz., Charge Nos.1, 3 and 4 ought not have been interfered with, therefore, the modification made by the Tribunal, through the impugned award modifying the punishment into compulsory retirement, is not in appreciation of evidence and therefore, the same is liable to be interfered with, he contended.

5.The learned Senior Counsel has also taken this Court to the said three proven charges viz., Charge Nos.1, 3 and 4. The learned Senior Counsel would contend that, insofar as the Charge No.1 is concerned, it may be construed as a minor charge. However, the charge No.4 which is also one of the minor charge, according to the Tribunal, through the impugned award, however it is a major charge, by virtue of that, the Bank has been put to heavy embarrassment and therefore, for the said proven major charge i.e., Charge No.4, the second respondent was deserved to be punished with maximum punishment of dismissal of service.

6.In support of his contention, the learned Senior Counsel has relied upon the following decisions :

(i) 2002-I-LLJ 941 (Union of India and others Vs. Registrar, Central Administrative Tribunal, Chennai and another)

(ii) (2005) 7 SCC 435 (State Bank of India and another Vs. Bela Bagchi and others)

(iii) (2009) 2 SCC 589 (Panchi Devi Vs. State of Rajasthan and others)

7.Since the Industrial Tribunal in its impugned award has very much banked on the theory of discrimination, as has been projected by the employee side and based on which, the Tribunal has come to the conclusion that, even in respect of some of the employees of the very same Bank, though some serious charges have been proved against them, the Disciplinary Authority had inflicted only some minor punishments like cut in five increments etc. and in respect of one case where the very Branch Manager had also involved related to Charge No.6 is concerned, though certain charges made against him other than Charge No.6, had been proved, he was also punished with compulsory retirement. Therefore, when such kind of leniency had been shown in respect of those employees, such a leniency since has not been shown to the second respondent, it would be a clear discrimination. In this regard, the learned Senior Counsel would heavily rely upon the decision made in 2009 2 SCC 589 (cited supra).

8.By relying upon the said decision, he would contend that, the theory of discrimination cannot be invoked in respect of awarding the punishment for proven charges. It is a decision as well as the discretion to impose a particular punishment and if at all the punishment awarded by the Disciplinary Authority is violently disproportionate to the proven charge and it is also against the service regulations where different punishments have been enumerated to be imposed against such kind of proven charges, only in such kind of rare occasion, the punishment awarded by the Disciplinary Authority would normally be interfered with, otherwise, the punishment awarded by the Disciplinary Authority, of course, on the basis of discretion, would not be automatically liable to be interfered with merely on the ground of discrimination.

9.The learned Senior Counsel by further elaborating this point would contend that, if two employees involved in same disciplinary proceedings, where, same set of charges are given and depending upon the proven charge and also the embarrassment to the employer as well as the loss sustained by the employer would also be the criterion, based on which, by using the discretion, of course, by the Disciplinary Authority, different punishments may be imposed. Therefore, it cannot be expected that, in respect of same set of charges the delinquents would be expected to be punished with the same punishment and that kind of pedantic approach cannot be expected from an employer as that much of discretion are available with the employer under service jurisprudence. Therefore, the learned Senior Counsel would contend that, the discrimination theory as has been taken as a tool for the basis, by the Tribunal, to come to the conclusion that, the second respondent has been discriminated by awarding the major punishment of dismissal from service comparing with other similarly placed persons of proven charges, cannot be countenanced and therefore, on that basis, the Tribunal ought not to have interfered with the punishment awarded against the second respondent, therefore, the impugned award is liable to be interfered with.

10.However, Mr.Balan Haridas, learned counsel appearing for the second respondent/employee would contend that, out of the seven charges, two charges had not been proved, even according to the Enquiry Officer's report. In respect of the remaining five charges, when industrial dispute was raised, the first respondent/Tribunal after elaborately discussed the evidence adduced by both sides, has come to the conclusion that, only three out of five charges have been proved viz., Charge Nos.1, 3 and 4 and Charge Nos.5 and 6 are not proved.

11.He would further submit that, the proven charges i.e. Charge Nos.1, 3 and 4 are concerned, admittedly the Charge No.1, which is the basis for other charges, is a minor charge and for such minor charge, whether major punishment can be imposed is the question and the major punishment, in fact, has been imposed on the minor charge viz., Charge No.1. Insofar as the other two proven charges i.e., 3 and 4 is concerned, the learned counsel would submit that, the said two charges viz., Charge Nos.3 and 4 are concerned, those charges are noway connected with the official duty discharged by the second respondent and in this regard, absolutely, there has been no loss to the Bank and the mere statement that, the Bank has been put under embarrassment by virtue of the after effect, pursuant to Charge No.4 is concerned, it is a reason conveniently taken for the said purpose by the Bank and based on the Charge No.4 also no embarrassment has been met by the Bank and no loss sustained by the Bank. Therefore, even in respect of Charge No.4 also, assuming that, it has been proved, such a major punishment of dismissal of service cannot be imposed.

12.The learned counsel also would contend that, the second respondent having rendered unblemished service for 27 years in the petitioner Bank has been shown the door by placing him under major punishment of dismissal from service thereby he would lose all his retirement benefits such as, Provident Fund, Gratuity and Pensionary benefits. Now, by virtue of the modification, the second respondent would lose merely about three years service left at the time of dismissal and therefore, that itself is the punishment for the proven charge and therefore, there is every justification on the part of the Tribunal to come to a conclusion that, the punishment should be modified into a compulsory retirement.

13.In support of his contention, the learned counsel for the second respondent has relied upon the following judgment reported in (2008) 12 SCC 331 (Man Singh Vs. State of Haryana and others) and also a decision of this Court in W.P.No.13816 of 2008 dated 03.11.2016 in the matter of P.V.Sarguru Vs. Tamil Nadu Electricity Board. By relying upon these judgments, the learned counsel would submit that, insofar as the modification of punishment based on the proportionality theory, it is the decision as well as the discretion of the Judicial forum and therefore, such kind of discretion and decision cannot be found fault with merely because the Disciplinary Authority awarded the major punishment. He also contended that, it is not the case where the employee has been completely exonerated. In fact, he has been punished with the major punishment of compulsory retirement, where, he lost his three years of service and therefore, that itself is the major punishment, which was awarded by modifying the punishment given against him by the Tribunal, therefore, such a modified punishment requires no interference from this Court.

14.I have considered the said rival submission made by the learned counsel for both sides and also have perused the materials placed before this Court.

15.At the outset, the learned Senior Counsel appearing for the petitioner Bank had submitted that, out of the five proven charges, as per the Disciplinary Authority, for which punishment was awarded against the second respondent, the Tribunal has found proved only three charges viz., Charge Nos.1, 3 and 4 and Charge Nos.5 and 6 not proved and therefore, in respect of the not proved charges of 5 and 6, the learned Senior Counsel has not canvassed any point on behalf of the petitioner Bank.

16.However, the learned Senior Counsel for the Bank contended that, insofar as the proven charges viz., Charge Nos.1, 3 and 4 are concerned, atleast Charge No.4 is a very serious charge, for which, the major punishment of dismissal of service is a proportionate punishment, therefore, the same ought not to have been interfered with by the Tribunal. Only to examine this point, I have gone through the three proven charges viz., Charge Nos.1, 3 and 4.

17.In fact, in Charge No.1, the act of the second respondent that, he had engaged in financial business outside the scope of his duties without obtaining written permission from the Bank, was considered to be a violation of Clause 5(a) of the Regulations. The said charge has been proved and there is no acceptable defence on the part of the employee also. However, even according to the petitioner Bank, this is a minor charge.

18.The second proven charge viz., Charge No.3 is concerned, while running such financial business separately by the delinquent viz., the second respondent, he seems to have issued some cheques, which had been dishonoured or the delinquent has failed to honour his cheques and therefore, that was considered to be a violation of Clause 5(a) of the Regulations. In respect of Charge No.4, which is also one of the proven charge, it is the charge of the petitioner Bank against the second respondent that, in his account, there had been a balance of Rs.37,85,000/- and comparing with the salary and known sources of the income of the second respondent, this huge amount is only to be considered as a disproportionate income to the known sources of the employee and therefore, the same is against the violation of Clause 5(i) therefore, this also is one of the serious violation to the service regulations and therefore, for the said proven charge, the second respondent is liable to be punished with major punishment of dismissal of service, contended by the learned Senior Counsel for the petitioner Bank.

19.In this context, if we look at the order of punishment awarded by the Bank against the second respondent, out of the seven charges, since Charge Nos.2 and 7 have not been proved, for the other five proven charges, separate punishments have been given. For Charge No.1, the punishment awarded is reduction by two stages in the scale of pay for one year. For Charge No.3, reduction by two stages in the scale of pay for one year. For Charge No.4, dismissal from service, without notice. Since Charge Nos.5 and 6, though had been proved, according to the Enquiry Officer, which was accepted by the Disciplinary Authority, for which, punishment of dismissal from service was inflicted against the second respondent, the said two charges have been found to be not proved by the Tribunal and the said verdict of the Tribunal has not been controverted by the petitioner's Bank in this writ petition.

20.Therefore, for the purpose of the present issue, we can take only three proven charges viz., Charge Nos.1, 3 and 4. Out of the three proven charges, in respect of Charge Nos.1 and 3, the Bank itself considered it to be a minor charges and the very punishment awarded by the Bank itself is reduction by two stages of scale of pay for one year. Only in respect of Charge No.4, the major punishment of dismissal of service had been inflicted against the second respondent.

21.In order to appreciate the Charge No.4, which is the issue now, the entirety of Charge No.4 as given in the Charge Memo is extracted hereunder:

"Charge No.4.:

It is observed from the OD-Cent Convenient a/c (No. 1017824138) of Mr. Sekar at Mogaippair branch, the following cash transactions have taken place during the period from August 2007 to January 2009.

Month / Year	AMT CREDITED (RS.)	Month / Year	AMT CREDITED (RS.)
08/2007	31000.00	05/2008	340000.00
09/2007	34500.00	06/2008	178000.00
10/2007	53150.00	07/2008	403000.00
11/2007	266000.00	08/2008	600000.00

Month / Year	AMT CREDITED (RS.)	Month / Year	AMT CREDITED (RS.)
12/2007	144250.00	09/2008	37000.00
01/2008	60400.00	10/2008	148000.00
02/2008	273100.00	11/2008	450000.00
03/2008	209100.00	12/2008	42000.00
04/2008	459000.00	01/2009	56500.00
Total			3785000.00

The total amount of Cash credited to his account amounts to his account amounts Rs.3785000/- besides several clearing and transfer transactions. The total gross salary drawn by Mr. Sekar during the above period from August 2007 to January 2009 was Rs.446999/-. The total amount credited to his account was very huge and disproportionate to his known source of income which is covered under Clause 5(i) viz. "speculation in stocks, shares, securities or any commodity whether on his account or that of any other persons" read with 5(j) viz. "doing any act prejudicial to the interest of the bank" of Memorandum of Settlement dated 10.04.2002 on Disciplinary Action Procedure for workmen."

22.Assuming that, the Charge No.4 is proved, what has been proved is that, in the account of the second respondent, there has been a huge money to the extent of more than Rs.37 lakhs, which was considered to be a money accumulated disproportionate to the known sources of the income of the second respondent. Insofar as this charge is concerned, as far as the petitioner Bank's points of view, there was no loss to the Bank, and no financial loss occurred because of the action on the part of the second respondent. Though the second respondent had not given any satisfactory answer for having such a huge money in his account, the natural corollary would be that, money would have been accumulated by him, by earning from his other business viz., the financial company run by him, which was in fact Charge No.1.

23.When the Bank considers, running a financial company by the Bank employee without permission from the Bank itself is a minor charge, earning from such business and depositing the same in the account of the employee, which is the subject matter of Charge No.4, was considered to be a major charge and based on which only, the Bank wanted to inflict the major punishment of dismissal from service. This has been clearly evidenced from the very order of the Disciplinary Authority dated 08.10.2013. Therefore, for the purpose of deciding whether the modification made by the Industrial Tribunal, of the punishment, from dismissal of service into a compulsory retirement is correct or not, it is only related to Charge No.4.

24.In this context, it is further to be noted that, the Tribunal on the basis of the theory of discrimination, very much relied on by the employee's side, has given the following finding in the impugned award.

> "23.Still another argument advanced on behalf of the petitioner is that the petitioner was discriminated while imposing punishment. Ext.W48 to Ext.W50 and Ext.W52 to Ext.W55 are the documents produced by the petitioner to show that he was discriminated. The petitioner has stated in his Proof Affidavit that much lesser punishments only have been given to the Officers of the Bank against whom severe charges were found proved. He has stated in the affidavit that the Branch Manager of Mogappair Branch who had authorized entry of Rs.15.00 crores which is the subject matter of Charge No.6 levelled against him was imposed only with the punishment of compulsory retirement though other charges were also proved against him and Bank had lost several crores of rupees. Again, Senior Manager of Ellis Nagar Branch, Madurai had caused loss of crores of rupees by extending loan on fabricated and forged documents and he is said to have been imposed the punishment of cut of five increments only. Senior Manager of Darapuram Branch who had been on indiscriminate lending and allowed unauthorized overdraft and caused loss of crores of rupees was imposed with the punishment of stoppage of 15 increments for one year. The Chief Manager of Coimbatore Mill Branch who had caused loss of crores of rupees by lending money against forged and fabricated documents is said to have been let off with stoppage of increment. One Rajeshwari, Computer Terminal Operator of Mogappair Branch who made entry of Rs.25.00 crores of rupees in the account of Krishna Builders was also imposed with the punishment of stoppage of increment. Thus according to the petitioner he was discriminated when compared with the above persons. Ext.W50 the enquiry report in repsect of Srinivasa Reddy, Chief Manager of Coimbatore Mill Branch, Ext.W52 the Charge Sheet in respect of Muthappan, Senior Manager of Ellis Nagar Branch, Ext.W54 the Charge Memo in respect of Ramabadran who

was Manager of Darapuram Branch and Ext.W55, the attendum to Ext.W54 Charge Memo and also Ext.49, the final order in respect of Sivagurunathan Krishnan, Senior Manager of Mogappair Branch imposing punishment of compulsory retirement are the documents produced by the petitioner. Other than Ext.W49, documents showing punishment imposed on the concerned Officers are not produced. However, the statement made by the petitioner in proof affidavit regarding the punishment imposed are not challenged during cross-examination. On the other hand the cross-examination is to the effect that the punishment referred to are correct. In any case there is Ext.W49 which spells out severe charges for which punishment imposed is compulsory retirement only. So there is some justification in the case advanced by the petitioner that more severe punishment was imposed on him though the misconducts alleged against him are less severe than that of the Officers referred to earlier."

25.The Tribunal has discussed the issue in detail, where, it has stated that, in respect of a Branch Manager, who had also been inflicted with a punishment because of his involvement in the same set of charges especially Charge No.6, which was levelled against both the second respondent as well as the said Branch Manager, he was imposed with a punishment of compulsory retirement, even though certain charges made against the said Branch Manager had been proved against him, whereby the Bank had lost several crores of rupees. Two more such instances had also been stated by the employees' side, where, even though loss had been occurred to the petitioner Bank, those delinquents were dealt with some minor punishments or they have been shown with leniency of imposing punishment of cut in increment only.

26.This position might have influenced the learned Judge of the Industrial Tribunal, where, he would have found that, the very same Bank by using its discretion has given lessor punishment to the proven charge under which Bank also sustained loss, whereas, such a leniency has not been shown by using the discretion of the Bank being the Disciplinary Authority against the second respondent and therefore, the Tribunal has come to the conclusion that, such a discretion can very well be used by the Tribunal of course by invoking the proportionality theory based on the proven charge.

27.Even though it was argued by Mr.S.Ravindran, learned Senior Counsel appearing for the Bank that, against Disciplinary Authority to impose a particular punishment by using its discretion and decision, the theory of discrimination cannot be invoked and in this context, even though he relied upon 2009 2 SCC 589 (cited supra), Mr.Balan Haridas, learned counsel for the second respondent would contend that, this case relied upon by the Bank's Senior Counsel was related to misappropriation of funds of the banks and here in the case in hand, no such charge had been made against the second respondent.

28.There is some force in the said contention of the learned counsel appearing for the second respondent as none of the proven charges viz., Charge Nos.1, 3 and 4 had shown that, because of those charges or because of the action or inaction on the part of the second respondent, the Bank has sustained any loss. Even though it was canvassed by the learned Senior Counsel appearing for the Bank that by virtue of non honouring of cheques issued by the second respondent in his financial business, the Bank had been put under embarrassment to recover the money from the salary of the second respondent and to pay back to the creditors, whether such an embarrassment caused to the Bank would amount to be equal to a committed violation made by an employee which makes the Bank or institution or employer to sustain a loss.

29.Therefore, if we compared with such situation where certain loss occurred to the Bank as an employer and in the case in hand, where no such loss has been occurred even because of the proven charge on the part of the second respondent, both situation cannot be treated equally and therefore, the major punishment of dismissal of service awarded against the second respondent only in respect of the Charge No.4 is concerned, in the considered of this Court, is on the higher side or it may be disproportionate.

30.Therefore, the Tribunal also, having considered all these aspects has come to the conclusion that, certainly for the proven charges against the second respondent, he should be punished and therefore, the second respondent was not exonerated from the total punishment or the Tribunal has not gone to the extent of reducing the punishment as a minor one like cut in increment etc. and it has in fact modified the punishment only to a compulsory retirement which is again a major punishment and that was considered to be a deserving one to be inflicted on the second respondent.

31.The said conclusion arrived at by the Tribunal in modifying the punishment from dismissal of service into the compulsory retirement, in the considered opinion of this Court, is justifiable. Therefore, the said reasoning given by the

Tribunal as well as the conclusion arrived at in the impugned award, does not require any interference from this Court.

32.In that view of the matter, this Court feel that, the impugned award is sustainable and accordingly, this Writ Petition is deserved to be rejected.

33.Resultantly, the Writ Petition fails and therefore, the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

Sgl

To
The Presiding Officer,
Central Government Industrial Tribunal - cum - Labour Court, Chennai.

+1CC to Mr. Balan Haridas,Advocate,SR 35101.

W.P.No.22155 of 2016

SVI(CO)
NRA(05/02/2021)