



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.07.2021	13.09.2021

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9575 and 19718 of 2010

W.P.No.9575 of 2010

The General Manager,
State Bank of India,
Region-II, Chennai.

... Petitioner

-VS-

1.The Central Government Industrial Tribunal
-cum-Labour Court,
Block No.1, Sastry Bhavan,
Chennai - 600 034.

2.Mr.R.Nagarajan

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records from the 1st Respondent relating to the I.D.No.122 of 2003 and the Award dated 25.01.2010 on the file of the Central Government Industrial Tribunal-cum-Labour Court the 1st Respondent and quash the order dated 25.01.2010 made in I.D.No.122 of 2003 insofar as it modified the punishment dated 19.10.2001 imposing dismissal without notice to the punishment of compulsory retirement.

For Petitioner : Mr.Anand
M/s.T.S.Gopalan & Co.

For R1 : Tribunal

For R2 : Mr.M.Ravi



W.P.No.19718 of 2010

R.Nagarajan

... Petitioner

-VS-

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1.The Presiding Officer
The Central Government Industrial Tribunal
-cum-Labour Court,
Sastry Bhavan, Chennai - 34.

2.The General Manager,
State Bank of India
Region II, Chennai-1.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for records from the 1st Respondent relating to the I.D.No.122 of 2003 and the Award dated 25.01.2010 on the file of the 1st Respondent and quash the same and direct the 2nd Respondent to reinstate the petitioner with continuity of service with back wages and attendant benefits.

For Petitioner : Mr.M.Ravi

For R1 : Tribunal

For R2 : Mr.Anand for M/s.T.S.Gopalan & Co.

C O M M O N O R D E R

The Writ Petition in W.P.No.9575 of 2010 has been filed by the State Bank of India, challenging the Award dated 25.01.2010 passed by the 1st Respondent, by which the punishment of dismissal imposed on the employee / R2 was modified into the one of Compulsory Retirement. In W.P.No.19718 of 2010 filed by the employee, the challenge is to the Award dated 25.01.2010 passed by the 1st Respondent in respect of Compulsory Retirement, with a direction to the 2nd Respondent to reinstate him in service, with continuity of service with back wages and other attendant benefits.

2. Since the issue involved in these Writ Petition is one and the same, they are taken up together for joint disposal. For the sake of brevity, the parties are, in short, referred to



as Bank and Employee respectively (for State Bank of India and R.Nagarajan).

Facts in W.P.No.9575 of 2010:

3. It was the case of the Bank that the Employee was appointed on 07.05.1981 and on account of certain serious and gross misconducts, a detailed enquiry was conducted in terms of Bi-Partite Settlements and thereafter, he was dismissed from service without notice. The Employee raised an Industrial Dispute, pursuant to which, the Government of India referred the dispute to the 1st Respondent for adjudication.

3.1. It was further case of the Bank that the Employee was issued with a Charge Memo dated 11.08.1998, containing as many as the following four charges:

- i) Copying of entries in the Savings Bank to defraud the Bank;
- ii) Preparing of Parallel Pass Book to commit forgeries;
- iii) Withdrawal of Rs.1,42,800/- on 16 occasions; and
- iv) Causing serious financial loss by using the forged withdrawal slips, preparation of SB passbook and misuse of the official position.

3.2. It was also the case of the Bank that the Employee sent a reply dated 06.11.1998 and being not satisfied with his explanation, an Enquiry Officer was appointed to conduct an enquiry. During the course of enquiry, it was found out that he had committed unauthorized and illegal withdrawals of Rs.1,42,000/- from the Savings Bank Account No.21379 of one customer by name Mr.S.Mohan and the complaint dated 18.12.1996 (Ex.P1) made by the customer was forwarded to the Inspector of Police, Kancheepuram, before whom, the Employee admitted his guilt and explained the manner in which, he had committed such misconducts with the help of one Hariharan and Rajan Babu, who were outsiders.

3.3. It was stated by the Bank that though enquiry proceedings commenced on 24.06.1999, the Employee did not cooperate for the conduct of enquiry proceedings and the Bank marked documents in Ex.Ps.1 to 28 and list of Witness P.W.1 to P.W.13, whereas the Employee did not mark any documents and produce the witnesses. Though several witnesses were examined and cross examined by the Employee, on 14.03.2001, the Employee



requested for recalling P.Ws.2 and 4 for cross examination and his request was declined on the ground that he did not cross examine them on the earlier occasion. The Enquiry Officer, after conducting a thorough enquiry submitted a report running to 121 pages, which were considered by the Disciplinary Authority and thereafter, an order dated 07.09.2001 was passed with regard to the proposed punishment of dismissal without notice. Subsequently, after giving personal hearing to the Employee, the Disciplinary Authority passed an order dated 19.10.2001, confirming the punishment of dismissal without notice, against which, an appeal was preferred by the Employee before the Appellate Authority. The Appellate Authority, after considering the materials and affording a personal hearing to the Employee, passed an order dated 01.12.2001, confirming the punishment of dismissal without notice.

3.4. It was the stand of the Bank that the Tribunal, on reference for adjudication, held that the domestic enquiry was not just and proper, on the ground that the request of the employee for examination of his witnesses had been turned down. The Tribunal lost sight of the fact that despite grant of sufficient opportunities, it was the employee, who did not utilize the opportunity. Even though the Tribunal accepted the misconducts of the employee, by invoking the jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), the punishment of dismissal was converted into the one of Compulsory Retirement. Stating that the Tribunal, having held that the charges were proved, ought not to have interfered with the punishment, the Bank is before this Court to set aside the Award dated 25.01.2010.

Facts in W.P.No.19718 of 2010 in nutshell:

4. The case put forth by the Employee in this Writ Petition was that he joined the services of the Bank as Clerk on 07.05.1981 and a memo was issued to him and others, on the charge of improper verification of specimen signature of 9 withdrawal slips before writing in the ledgers and caused loss to the Bank to the tune of Rs.89,300/-. Based on the complaint of the Chief Manager, he was detained by the Police and forced him to make some entries in the duplicate pass book and also obtained his signature in the blank papers.



4.1. The further case of the Employee was that the Bank issued him a charge memo on 21.07.1997, levelling four charges as stated supra, for which he sent an explanation through Advocate on 13.08.1997, denying all the charges. Since he was a Clerk, he did not have access to pass book and the verification of specimen signature was in the custody of Teller and Passing Officer. It was stated that out of 16 entries, nine entries were made by the Employee and there was no whisper about the remaining 7 entries.

4.2. It was also the case of the Employee that Police complaint was lodged by one Mohan on 17.12.1996 and the FIR was registered with the delay of two days on 19.12.1996. The Tellers, who were examined categorically deposed that the complainant only withdrew the amount and his specimen signature was duly verified, inspite of which, he was victimized in the occurrence. It was further stated that his name was not included in the FIR and even the Chief Manager did not depose against him, so also the Hand Writing Expert.

4.3. It was submitted that the Sub-Inspector of Police, by name Jayaram, who tortured him and foisted a false case against him, was subsequently convicted by the Sessions Court for life imprisonment for a murder on account of similar torture carried out to him. The Tribunal, having held that the domestic enquiry was not proper by an order dated 22.12.2004, on the basis of his preliminary objection, posted the dispute for further hearing by giving liberty to the Bank to lead additional evidence. There were two Writ Petitions in W.P.Nos.5116 and 3785 of 2005 filed by the Employee and the Bank, against the order of the Tribunal dated 22.12.2004 and this Court, by a Common Order dated 12.11.2009, directed the Tribunal to adjudicate the dispute after affording opportunity to the Employee.

4.4. It was the grievance of the Employee that the Tribunal, without even discussing the material evidence produced by the Employee, while holding that the charges are proved, modified the punishment of dismissal into compulsory retirement, which is arbitrary in nature and is liable to be set aside.

5. The Employee and the Bank filed counter affidavits, which were nothing but reiteration of averments made in their respective Writ Petitions. Though the counter affidavit filed by the Bank could be treated as supplement to the affidavit in the



Writ Petition, it was additionally stated therein that the Employee suppressed the factum of his conviction dated 29.06.2010, for one year Rigorous Imprisonment with fine of Rs.10,000/- in C.C.No.372 of 2003 for offences under Sections 420 IPC r/w Sections 109, 468 r/w 109 and 471 IPC r/w 109 IPC. Therefore, it was prayed that the Employee is not entitled to any relief on this ground alone. Though there is mention of criminal case in the affidavit, the details of criminal case find reflected in the Award of the Tribunal.

5.1. In the counter affidavit of the Bank, it was brought to the notice of this Court that the Bank has been paying last drawn salary under Section 17-B and the Employee was paid as on date a sum of Rs.9,32,953.48, including PF settlement amount of Rs.1,30,745/- and the gratuity amount of Rs.1,05,090/- and the Employee had unjustly enriched by himself by monthly payment, despite suppression of his conviction by the Criminal Court. Hence, it was vehemently argued that the Writ Petition filed by the Employee has to be dismissed in limine and the monthly payment under Section 17B would be a factor to disentitle him any relief.

6. Learned counsel for the Employee submitted that the Tribunal, after coming to the conclusion that the domestic enquiry is vitiated, must have granted the relief of reinstatement to the Employee, in lieu of compulsory retirement, as the converse is contrary to the proposition laid down by the Supreme Court in the case of Neeta Kaplish vs. Presiding Officer, Labour Court and Others, reported in 1999 (1) SCC 517, wherein it was held as follows:

"28. Having regard to the findings recorded by the Labour Court that the domestic enquiry was not properly and fairly held and an effective opportunity of hearing was not given to the appellant, the Labour Court was right in calling upon the Management to lead fresh evidence. Since the Management did not lead any fresh evidence on merits, the appellant was well within her right to say that she, too, would not lead any fresh evidence. But, for that reason, her claim could not be rejected. Rather, she was entitled to be granted relief then and there. However, having regard to the entire circumstances of the case particularly when the Labour Court had itself found that the enquiry was not fairly and



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properly held, we allow the appeal, set aside the judgment of the High Court and that of the Labour Court and remand the case back to the Labour Court to decide the case afresh after requiring the parties to D lead fresh evidence on merits in pursuance of its order dated 21.11.1995. Having regard to the fact that the appellant was removed from service on 04.04.1987, we direct that the Labour Court shall dispose of the whole matter within three months from the date on which the certified copy of this Judgment is produced before it..."

6.1. Learned counsel for the Employee further pointed out that mere suspicion without any material evidence in support thereof, cannot be the base for arriving at a definite conclusion and foisting liability on the Employee, as held by the Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank and others, reported in (2009) 2 SCC 570 that "As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof".

6.2. Learned counsel for the Employee further drew the attention of this Court to the order passed by this Court in R.Ramasubbu vs. The Additional Director General of Police and others [W.P.(MD) No.23041 of 2015] dated 07.02.2018 to contend that the conversion of punishment into the the one of compulsory retirement itself is disproportionate to the unproved charges. For the sake of convenience, the relevant paragraphs of the order (supra) are extracted hereunder:

"11.As already pointed out, the enquiry officer rendered the findings adverse to the petitioner herein solely on the strength of the statement made by the wife of the deceased during the disciplinary enquiry. The very same witness turned completely hostile and took a total contradictory stand before the criminal Court. This Court exercising its jurisdiction under Article 226 of the Constitution of India cannot lose sight of this subsequent development. It is true that the disciplinary authorities will have to go by the material on record. But when the final order is put to challenge before this



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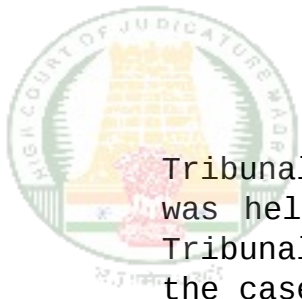
Court and certain subsequent development had taken place in the meanwhile, this will be justified in taking the same into account. The disciplinary authorities themselves have come to the conclusion that the petitioner is not guilty of any moral turpitude. The second part of the charge is specifically held as not proved even during the disciplinary proceedings. This leaves only with the first part of the charge which is ? perfunctory investigation?.

12. This Court is therefore of the view that the punishment of compulsory retirement is shockingly and grossly disproportionate. The impugned order is therefore set aside. The matter is remitted back to the file of the second respondent to impose any other lesser punishment, considering the nature of charge, namely, perfunctory investigation. This Writ Petition is allowed accordingly..."

7. Learned counsel for the Bank strenuously contended that the Employee himself admitted his guilt in his oral evidence to the effect that he made entries in the pass book. When the final order of punishment was passed after following due process of law and the same was also confirmed by the Appellate Authority after a personal hearing, then no plea is available for the delinquent that the order passed was in violation of principles of natural justice. In support of his contention, he relied on a judgment of the Supreme Court in the case of Canara Bank vs. V.K. Awasthy, reported in 2005 (6) SCC 321, in which it was observed as follows:

"6.....It is to be further noted that in the appeal before the Appellate Authority findings of the Inquiry Officer and Disciplinary Authority were challenged and, therefore, the question of any prejudice does not arise. Since employee had the opportunity to meet the stand of the Bank, it was to his advantage, and opportunity for personal hearing was also granted. Keeping in view what was observed in B. Karunakara's case (supra) there was no question of violation of principles of natural justice."

7.1. It was further argued by the learned counsel for the Bank that the misconduct of the Employee was proved beyond reasonable doubt through oral and documentary evidence and the



Tribunal erred in conversion of punishment, especially when it was held that the charges were proved. The Award passed by the Tribunal is against the dictum laid down by the Supreme Court in the case of State Bank of India and others vs. Samarendra Kishore Endow and Others, reported in (1994) 2 SCC 537, by which, though the SLP filed by the State Bank of India was dismissed, the matter therein was remanded only to decide the possibility of lesser punishment either by the Disciplinary Authority or by the Appellate Authority. For the sake of brevity, relevant paragraphs are extracted hereunder:

"16.....In the circumstances it may be that the punishment of removal imposed upon the respondent is harsh but this is a matter which the disciplinary authority or the Appellate authority should consider and not the High Court or the Administrative Tribunal. In our opinion, the proper course to be adopted in such situations would be to send the matter either to the Disciplinary authority or the Appellate authority to impose appropriate punishment.

17. For the above reasons, the appeal is dismissed with an observation that the Appellate authority shall consider whether a lesser punishment is not called for in the facts and circumstances of the case. The Appellate authority shall pass orders in this behalf within four months of the receipt of the copy of this order."

8. Heard the learned counsel on either side and perused the material documents available on record.

9. The Bank and the Employee have approached this Court by filing these Writ Petitions respectively, challenging the portion of the Award dated 25.01.2010 in I.D.No.122 of 2003 that had gone against them. The Government of India, by an order dated 31.07.2003 referred the Industrial Dispute for adjudication to decide the following issue:

"Whether the action of the Management of State Bank of India in imposing the punishment of dismissal from service of Sri.R.Nagarajan is legal and justified? If not, what relief he is entitled to?"



10. The Employee was issued with a charge memo, stating inter alia that he had failed to verify the genuineness of the specimen signature in the withdrawal slips before posting it in the ledger, thereby caused a loss to the Bank. The Employee, based on the complaint lodged by one Mohan, was detained by Police from 17.04.1997 to 19.04.1997 and since the Employee was under judicial custody from 20.04.1997 to 02.06.1997, he was placed under suspension by the Bank by an order dated 24.04.1997. It is seen that though the Bank gave an undertaking before this Court in W.P.No.15230 of 1997 filed by the Employee for quashing the enquiry proceedings that they will not proceed with the enquiry proceedings, they acted contrary to their own undertaking. Subsequently, the Employee went upto Supreme Court and after disposal of SLP, he requested the Enquiry Officer to provide him an opportunity to cross examine four witnesses, which was refused, thereby there was a violation of principles of natural justice. The Enquiry Officer, based on the documents produced, came to the conclusion that the charges are proved, pursuant to which, the Disciplinary Authority dismissed the employee from service, which was confirmed by the Appellate Authority.

11. The Bank stated that the employee has committed a gross misconduct in respect of an account of a customer, namely, Mohan and though several opportunities were granted to the Employee to put forth his case, he failed to produce documents and also to cross examine the witnesses. In the enquiry, he had not produced documents, except adopting the tactics of frequent walking out of the enquiry. Finally, the Enquiry Officer submitted a report, holding the charges to be proved against the Employee and since the Bank lost confidence in the employee, no relief could be granted to him and he should not be allowed to continue in service.

12. In the Industrial Dispute, the Employee raised a preliminary objection as to the improper and unfair conduct of the domestic enquiry and though the Tribunal concluded that there was no proper conduct of domestic enquiry, it allowed the Bank to lead additional evidence. According to the Employee, the Bank did not reserve any right to lead additional evidence in the counter affidavit, in the absence of which, there was no justification on the side of the Tribunal in allowing the Bank to lead additional evidence. Against the order of the Tribunal dated 22.12.2004



regarding preliminary objection, both the Employee and the Bank approached this Court by filing Writ Petitions in W.P.Nos.5116 and 3785 of 2005. The Writ Petition filed by the Management was dismissed and the other one filed by the Employee was ordered by this Court vide common order dated 12.11.2009, with a direction to the Tribunal to adjudicate the dispute after affording opportunity to the Employee.

13. It is pertinent to mention here that the Bank, without waiting for the final Award to be passed by the Tribunal, had approached this Court by filing W.P.No.3785 of 2005 against the order of the Tribunal dated 22.12.2004 passed in respect of preliminary objection, which is contrary to the decision of the Apex Court in the case of The Cooper Engineering Limited vs. P.P. Mundhe, reported in (1975) 2 SCC 661, wherein it was held as under:

"22...We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

However, the request of the Management in W.P.No.3785 of 2005 has been rejected in the said Writ Petition.

14. Now, the issue to be decided is, whether the Management has proved the charges or not? According to the Management, all the relevant documents have been marked before the Tribunal and the Tribunal had properly analyzed the documents and therefore, it should have confirmed the punishment of dismissal imposed on the Employee, instead of interfering with the punishment.

15. Once the domestic enquiry has been held to be not fair and proper, it is open to the Employer to adduce fresh evidence in the light of the judgment of the Apex Court in the case of Workmen of Fire Stone Tyre Rubber Company v. Management, reported in 1973 (1) LLJ 78 (equivalent (1973) 1 SCC 813, provided there is a plea taken by the Management in the counter affidavit that they must be given an opportunity to let in



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evidence. In *Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and others*, reported in (1979) 3 SCC 371, the Apex Court held that there is no need for the Labour Court or Tribunal to remind the Management as to what they should do. Admittedly, in this case, the domestic enquiry was held to be defective and the subsequent plea of adducing additional evidence was negatived by this Court. It is no doubt true that the enquiry report, which has been held to be bad by the Tribunal, can be marked as Exhibit, as it would form part of the material on record. But, however, it can be looked into only for the purpose of contradiction and it cannot be construed as a gospel truth.

16. There is no evidence let in by the Management before the Tribunal to establish the case. Firstly, there was no plea made by the Management to lead additional / fresh evidence and secondly, the domestic enquiry has been found to be improper. In case of any plea in the counter to lead evidence for the first time, it should have been done by the Management at the first instance and the employee has to lead evidence thereafter. The procedure adopted by the Tribunal that the Employee should let in evidence first, may not be correct. In any event, in this case, the Employee was neither granted any permission to lead any evidence nor plea was raised by the Management to let in additional / fresh evidence.

17. In the present case, doors have been closed for fresh evidence by the Management to establish the charges and though charges levelled against the Employee appear to be very serious in nature, the Bank had taken it very casually to deal with such a serious issue and failed to establish the charges in proving the guilt of the Employee by letting in evidence. Unless until fresh evidence is let in to establish the charges, it is very difficult for the Management to sustain their argument by only relying upon the domestic enquiry, which had been thrown by the Tribunal even at the initial stage itself. As already stated supra, there is no avenue for the Management to lead additional / fresh evidence, as the plea of leading additional / fresh evidence was absent in the counter. When there is no evidence on the side of the Bank, obviously, no punishment can be imposed on the Employee. When charges are not proved, the question of imposing any punishment or modifying the punishment into the one of compulsory retirement does not arise at all.



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18. Considering the overall circumstances, this Court finds that the Bank's plea that the Employee had committed a gross misconduct and the orders of the Disciplinary Authority and the Appellate Authority should be restored, does not hold good, as the approach adopted by the Bank in this case is completely perfunctory and not appreciable. Hence, the Writ Petition filed by the Bank (W.P.No.9575 of 2010) is liable to be dismissed and the Writ Petition filed by the Employee (W.P.No.19718 of 2010) is to be allowed.

19. In the result, W.P.No.9575 of 2010 is dismissed and W.P.No.19718 of 2010 is allowed. Since it was stated that the Employee has already attained superannuation, the Bank is directed to extend all the monetary benefits due to the Employee, if not already given, after adjusting the amount already paid, including the wages paid under Section 17-B of the I.D.Act, 1947, together with continuity of service, consequential and all other benefits, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To:

1. The Presiding Officer
The Central Government Industrial Tribunal
-cum-Labour Court,
Sastry Bhavan,
Chennai - 34.
2. The General Manager,
State Bank of India,
Region II, Chennai.

W.P.Nos.9575 and 19718 of 2010

RR(CO)
B.VC (12/10/2021)