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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.2108 of 2018

T.Kathirvel

.. Appellant

Vs

1.The Regional Manager  
(Disciplinary Authority)  
State Bank of India,  
Region-IV, Regional Business Office,  
Respondents, Administrative Office,  
No.21, McDonalds Road,  
Tiruchirappalli - 620 001.

2.Deputy General Manager,  
(Business and Operations)  
(Appellate Authority)  
State Bank of India,  
Disciplinary Proceedings Cell,  
Administrative Office,  
Tiruchirappalli Zone,  
No.21 McDonalds Road,  
Tiruchirappalli - 620 001.

3.The Presiding Officer,  
Central Government Industrial Tribunal  
cum Labour Court,  
Shasthri Bhavan, Haddows Road,  
Chennai - 600 006.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 14.03.2018 made in W.P.No.5675 of 2018.

Prayer in W.P.No.5675 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorari calling for the records from the files of the 3<sup>rd</sup> Respondent in I.D. No.36 of 2016 and quash its impugned Award dated 20.07.2017 insofar as the 3<sup>rd</sup> Respondent has negative petitioner claim for



reinstatement in service with continuity of service with back wages and with all other attendant and consequential benefits.

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For Appellant : Mr.K.M.Ramesh  
For Respondents : Mr.S.Ravindran, Sr.Counsel  
for Mr.S.Bazeer Ahamed for R1  
R3 - Court  
R2 - No appearance

JUDGMENT  
(Delivered by M.M.SUNDRESH, J.)

The appellant before us was initially appointed as a part time sweeper with half wages in the year 1993. The post was confirmed in the year 1994. Thereafter, he was appointed as Messenger with three-fourth wages.

2. An order was passed against the appellant pending enquiry suspending him on 12.02.2013. He was charged for the mis-conduct on the ground that he had passed the plain debit vouchers used for the purpose of withdrawing cash from the Savings Bank Account without the signatures of the account holders and made cash payment to another staff member of the same Branch by name Madhan (since deceased). The following is the charge framed against the appellant:

1.Shri.T.Kathirvel, Assistant has passed plain debit vouchers used for the purpose of withdrawing cash from Savings Bank Accounts of KCC borrowers without the signature of the account holders therein and made cash payment to another staff member of the same branch.

3. Pursuant to the enquiry conducted and upon finding that the charge against the appellant is proved, the order of dismissal was passed by the Disciplinary Authority on 28.09.2013. On the appeal filed by the appellant, the Appellate Authority, while confirming the conclusion arrived at by the Disciplinary Authority was pleased to modify the punishment from that of dismissal to that of removal. The following is the operative portion of the order passed in the appeal dated 23.03.2013:

"The Appellate Authority's observations:



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I have gone through the Enquiry report, the Disciplinary Authority's view and relooked into the matter in its entirety; the CSE passed the vouchers without ensuing the discharge from the customers and did not notice the debit voucher was signed by Shri.L.Madhan and not by the customer.

He is suffering from heart ailment and thyroid problem.

Considering his earlier service records, his medical ailment, his family condition, and the employee's 16-years of service rendered to this institution, depriving him the retirement benefits is not commensurate with the charges leveled against the CSE and place his family members in starvation.

Therefore I, as Appellate Authority, am of the view that the penalty of "Dismissal without Notice" imposed by the Disciplinary Authority on 28.09.2013 may be modified to "Removal from service" purely on humanitarian grounds.

Therefore, I modify the penalty as "Be removed from service with superannuation benefits i.e., Pension and/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" in terms of Clause 6(b) of the Memorandum of Settlement dated 10.04.2002 treating the period of suspension as suspension only for all its intents and purposes.

4. The appellant raised a dispute in I.D.No.36 of 2016 under Section 2 (A) (3) of the Industrial Disputes Act. The Central Government Industrial Tribunal dismissed the claim petition both on the ground of merit and on the ground of proportionality.

5. A writ petition was filed before the learned single Judge challenging the award passed by the Tribunal. The learned single Judge concurred with the view expressed by the Tribunal and thus upheld the award passed. As against the said order passed, the present appeal has been filed.

6. Mr.K.M.Ramesh, learned counsel appearing for the appellant, placing reliance upon the enquiry proceedings, submitted that it is a case of no evidence. It is for the department to substantiate the charges. The evidence would



reveal that the appellant was performing very well being a topper in gold loan and received gold medal. He received diamond achiever award from the Chairman for the gold loan. The aforesaid dereliction, even assuming is true, must have happened due to pressure of work. It is not as if there is a loss to the respondent Bank. The appellate authority having exercised the power in reducing the punishment, the Tribunal ought to have exercised the second limb of Section 11 A of the Industrial Disputes Act with respect to the quantum of punishment.

7.Mr.S.Ravindran, learned senior counsel appearing for the first respondent submitted that the disciplinary authority, appellate authority, the Tribunal and the learned single Judge have given categorical findings on merit on the basis of the materials available before them. Therefore, the power of review is not required to be exercised under Article 226 of The Constitution of India which is both extraordinary and discretionary in nature. The charge as proved is serious in nature. The appellate authority has shown leniency and therefore, no further indulgence is required. Even assuming the appellant has given voluntary retirement on the date of suspension or even at the time of passing of the order of dismissal by the disciplinary authority, he would not be entitled for the pension as still there will be about five months wanting provided the suspension period is also taken as one of service. The Tribunal has given cogent reasons for not exercising the power under Section 11A of the Act. Therefore, there is no need to interfere with the order passed. In support of this contention, learned senior counsel for the first respondent placed reliance on the following decisions:

(i)State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya ((2011) 4 SCC 584)

(ii)Lucknow K.Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh (2013 (5) LLN 100 (SC))

8.We have perused the report of the enquiry officer, the decision rendered by the disciplinary authority and as confirmed by the appellate authority. The Tribunal, in our view, passed a correct award with respect to the merit. It once again went into the entire evidence and held that the charge as framed is proved. The Tribunal examined the documents marked along with the oral evidence of the witnesses. The primary facts are not disputed by the appellant and in fact, there is tacit admission in the cross examination.



9. In such view of the matter, we do not wish to embark an enquiry at the appellate stage especially when the Court of first instance viz., the Tribunal has considered the relevant materials for coming to this conclusion. When such a conclusion is arrived, the same was not expected to be reappraised by this Court. The learned single Judge has also rightly dismissed the writ petition on merit.

10. We come to the next issue, which is on the exercise of power under Section 11A of the Act by the Tribunal insofar as the proportionality is concerned. We have already recorded the charge against the appellant. It is not as if the appellant has caused a loss nor there is an element of wilfulness involved. The charge mainly states about the dereliction and negligence on the part of the appellant. Perhaps, that is the reason why even the appellate authority has modified the punishment. We have further recorded the fact that the appellant's service otherwise was very praiseworthy. He had achieved distinction and was accordingly awarded. If the suspension period is taken into consideration he would have put in more than 18 years of service. He is a person who has come to the ranks having deserved the promotion by the dint of hard work. Therefore, for a single negligent work, denying the appellant the benefit of pension would be too harsh in our considered view. The appellant has got two more years to go. In such view of the matter, we are inclined to modify the award passed to the extent that the appellant is deemed to have completed 20 years of service only for the purpose of enabling him to get the benefit of pension.

11. Though the learned senior counsel appearing for the first respondent made reliance upon two decisions of the Apex Court, we do not find that they are applicable to the case on hand. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya* ((2011) 4 SCC 584), the facts are different. It is not as if this Court is ordering reinstatement. Similarly, the other judgment relied upon in *Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh* (2013 (5) LLN 100 (SC)) also does not apply to the case on hand. Even in the said judgment, reliance made by the learned senior counsel on para 16d may not have an application to the case on hand as there is no need for remitting the matter since we are dealing with the exercise of power under Section 11A of the Act by the Tribunal.



12. In such view of the matter, the writ appeal stands allowed in part. Accordingly, the award of the Tribunal stands modified to the extent that the appellant is entitled for pension on the ground that he deemed to have completed 20 years of service. No costs.

Sd/-  
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

mmi/ssm  
To

1. The Regional Manager  
(Disciplinary Authority)  
State Bank of India,  
Region-IV, Regional Business Office,  
Respondents, Administrative Office,  
No.21, McDonalds Road,  
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2. Deputy General Manager,  
(Business and Operations)  
(Appellate Authority)  
State Bank of India,  
Disciplinary Proceedings Cell,  
Administrative Office, Tiruchirappalli Zone,  
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+1cc to Mr.K.M.Ramesh, Advocate SR.No. 31290

+1cc to Mr.S.Bazeer Ahemed, Advocate SR.No. 31861

W.A.No.2108 of 2018

EV(CO)

A.SK(06.08.2021)