

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6269 OF 2022

Ajitkumar S/o Motilal Kasliwal,
Age : 63 Years, Occu. : Nil,
R/o Raj Galaxy, Flat No. B-4,
Cidco, N-6, Aurangabad. .. Petitioner

Versus

1. Central Bank of India,
Through Its Regional Manager,
Aurangabad Region, Aurangabad.
2. The Appellate Authority,
Deputy General Manager,
Central Bank of India,
Regional Office, Nagpur. .. Respondents

Shri Uday V. Khonde, Advocate for the Petitioner.
Shri S. S. Vidwans, Advocate for the Respondent No. 1.
Respondent No. 2 is served.

CORAM : SANDEEP V. MARNE, J.

CLOSED FOR JUDGMENT ON : 01.12.2022
JUDGMENT PRONOUNCED ON : 05.12.2022

JUDGMENT :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Petitioner challenges Award – I dated 29.10.2020 and Award – II dated 06.10.2021 passed by the Labour Court, Aurangabad in Reference IDA No. 12 of 2016 and seeks the relief of reinstatement with full backwages and continuity of service. He further seeks relief of refund of forfeited amount towards

pending bills. An alternate prayer is made for payment of compensation in place of reinstatement and full backwages considering advance age and disease of the petitioner.

3. Brief facts of the case are that, the petitioner joined respondent No. 1-bank on the post of peon with effect from 03rd October, 1984 initially as a daily wager and he was made permanent with effect from 01.01.1994. He was promoted as a cash peon with effect from 30.01.1995. He claims that he was diagnosed with Hepatitis-B during the course of testing in a private laboratory on 18th October, 2008.

4. On 04th February, 2014, petitioner was served with memorandum of charge sheet for initiation of disciplinary proceedings on following charges:

1. Mr. A. M. Kasliwal has claimed reimbursement of domiciliary treatment for Hepatitis-B since Dec.2008. Initially he claimed Rs. 13698/- per month. The amount of his bill was continuously increasing. In October 2012 his bill was reached to Rs. 29233/-. He further submitted his claim of Rs.43781/- as bill for May 2013. It shows that he tried to get more amounts by submitting bills of higher amount.

2. Since no certain period to cure his decease was mentioned in the medical certificate, he was referred to Medical Board (Govt. Medical College Hospital) Aurangabad. The Board has issued their report in which it is opined that only one tablet of Entacare 0.5 mg is sufficient for his decease as against his bill for three tablets per day that too up to June 2013. It clearly indicates that Mr. Kasliwal has claimed bill of treatment which was not at all required by him.

3. Mr. Kasliwal use to purchase Entacare 0.5 mg tablets from a medical shop named as M/s Nayan Medical & General Stores located at Shop No. 2, Shopping Centre N-11, Navjeevan Colony, Hudco, Aurangabad. It is the costly tablet as compared to other medicines. On inquiry it is learnt that

the shop is closed in December 2010. As no shop is in existence the bills submitted by Mr. Kasliwal are fake and thereby he has defrauded the Bank by submitting fake bills and got reimbursement of bills to the extent of Rs. 612870/- up to November 2012.

4. He further submitted bills for the period from December 2012 to August 2013 amount of which is Rs. 324729.50. The bills are based on the bills of M/s Nayan Medical & General Stores. The shop is not in existence. As such he has further made attempt to defraud the Bank by Rs. 324729.50.

5. Petitioner denied charges by submitting reply dated 05.09.2014. During the course of enquiry, petitioner submitted application on 04.06.2014 for summoning the owner of M/s Nayan Medical and General Stores as witness, however, that witness had already expired on 16.02.2013, on account of which he could not be examined. The Enquiry Officer submitted report dated 13.10.2014 holding that the charges were proved. By order dated 13.10.2014, petitioner came to be dismissed from service. He approached the Appellate Authority on 21.10.2014, but was not reinstated.

6. Petitioner approached the Central Labour Commissioner, Pune and after failure of conciliation, the reference was made by the Central Government under the Industrial Disputes Act for adjudication of dispute in respect of dismissal of the petitioner.

7. The Labour Court passed Award – I dated 19.09.2018 holding that the enquiry held against the petitioner was fair and proper and that the findings of the Enquiry Officer are not perverse. Petitioner challenged Award – I dated 19.09.2018 before this Court by filing Writ Petition No. 433 of 2019, which came to be disposed of by judgment and order dated 07.02.2020

holding that the Labour Court erred in not following mandate of amended Section 11-A and the law laid down by the Supreme Court in M/s Firestone Tyre and Rubber Co. of India P. Ltd. Vs. The Management and others. This Court therefore set aside Award – I and remitted matter to the Labour Court for fresh decision as regards correctness of the findings of the Enquiry Officer.

8. The Labour Court accordingly reconsidered the issue of correctness of findings recorded by the Enquiry Officer and delivered Award – I vide judgment and order dated 29.10.2020 holding that the enquiry was proper and that the findings of the Enquiry Officer are not perverse.

9. The Labour Court thereafter proceeded to decide issue Nos. 3 and 4 relating to proportionality of punishment and entitlement of the petitioner to relief of reinstatement by Award – II vide judgment and order dated 06.10.2021. The Labour Court answered those issues in negative and refused to grant any relief in favour of the petitioner. Petitioner has assailed Award – I dated 29.10.2020 and Award – II dated 06.10.2021 in the present petition.

10. Appearing for the petitioner Mr. Khonde, learned counsel would submit that the enquiry was conducted in gross violation of principles of natural justice. This submission is made referring to denial of an opportunity to the petitioner to engage an advocate to defend himself and denial of opportunity to examine the owner of Nayan Medical and General Stores. Mr. Khonde would further submit that the respondent-bank

produced additional documents directly before the Labour Court thereby denying fair opportunity to the petitioner. Mr. Khonde would further submit that the findings recorded in the enquiry are perverse as the defence of the petitioner that the medicines were delivered to him by home delivery by the owner of Nayan Medical and General Stores has not been appreciated. He would further submit that on account of death of the owner of medical store, the petitioner could not prove the factum of such home delivery and, therefore, inability to examine the owner of the medical store cannot entail punishment of dismissal from service. Mr. Khonde would further submit that the penalty is disproportionate to the misconduct proved. He would further submit that gratuity amount of the petitioner has illegally been withheld without following the provisions of the Payment of Gratuity Act. He would further submit that even though petitioner is dismissed from service, he is entitled to pension, which has not been paid.

11. Per contra, Mr. Vidwans, learned counsel appearing for the respondent-bank would oppose the petition and support the orders passed by the Labour Court in Award – I and Award – II. He would submit that the enquiry was conducted after duly following principles of natural justice. He would submit that misconduct committed by the petitioner is of serious nature involving misappropriation and financial irregularities warranting the punishment of dismissal from service. He would further submit that additional documents produced before the Labour Court by way of application dated 29.08.2018 were merely records of domestic enquiry, which were already supplied to the petitioner and that therefore no prejudice was caused to

him. He prays for dismissal of the petition.

12. After having heard learned counsel for parties, it is seen that the petitioner was facing serious charges of falsely claiming medical reimbursement running into huge amounts. Even though opinion of the Medical Board that the petitioner required only one tablet per day that too upto June 2013 is contradictory to the opinion of some of the private doctors that he required three tablets for indefinite period of time, the latter aspect of the charge of submission of medical bills from a shop which was in-operational makes the former part of the charge quite serious. Therefore, even if the opinion of the Medical Board is to be momentarily ignored and that of private doctors is to be accepted, the conduct of procuring bills from an in-operational medical shop by the petitioner casts a doubt of actual consumption of the tablets by the petitioner.

13. In the domestic enquiry the charges are held to be proved. In Award – I, the Labour Court has decided the issue of fairness of enquiry. The submission of Mr. Khonde that the petitioner was not provided assistance of advocate to defend himself is stated only to be rejected as it is not his case that either the Presenting Officer or Enquiry Officer was an advocate. It is trite that if the Presenting Officer or Enquiry Officer are not law graduates, delinquent-employee cannot be provided assistance of an advocate during domestic enquiry. The petitioner has fully participated in the enquiry proceedings and has been given full opportunity of defending himself. In Award – I, the Labour Court has recorded findings with regard to manner in which enquiry is conducted in para Nos. 10 and 11, which read as under

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10 On 25/02/2014, the first date of enquiry, the second party was present before the enquiry officer. The enquiry officer asked the preliminary questions to the Second party. The enquiry officer asked the second party whether he wants to appoint defense representative. The Second party answered that "he wants to appoint the defense representative". The Second Party further requested that he was not a member of any union, therefore, he may be permitted to appoint other person as his defense representative. The said request is also granted by the enquiry officer. The Second Party was allowed to inspect the entire documents which were produced in the enquiry proceeding. The management examined one witness Narhari Vasude Adgaonkar in presence of Second party on next date of enquiry i.e. 11-03-2014. On oral request of Second party, the short time was granted to appoint defense representative. On 16/04/2014, the request of the Second party short time was granted for appointing defense representative by the enquiry officer. On 21/05/2014, the Second party decided to defend himself in enquiry proceeding and elected not to appoint any defense representative. He was allowed to inspect all the documents. He was allowed to produce the documents in his defense and same is marked as Exhibits and kept in record by the enquiry officer. His request for adjournment for cross examining management witness is also granted by the enquiry officer. The Second party has taken cross examination of the management witness in detail. On 04/06/2014, the Second party was permitted to produce entire documents in his defense and after that he has completed his cross examination. The Second party has examined himself in the enquiry proceeding. He was cross examined by the management. On 25/06/2014, opportunity was given to the Second party to examine the witness in his defense. But the Second party failed to bring any witness and he himself given the statement. After that he filed the written statement of his defense and closed his evidence. Thereafter, the enquiry officer recorded his findings.

11 From the record it shows that the second party was present on each and every date of enquiry. The management witness was examined in the presence of

second party. The second party was allowed to cross examine the witness. All the documents were provided to the Second party workman. The second party signed on each and every papers of enquiry proceedings. The second party was allowed to appoint defense representative. But second party himself decided to defend himself in the enquiry proceeding. Therefore, from record it shows that enquiry was conducted by adopting the principles of natural justice. Hence, I answer issue no. 1 in negative.

14. Coming to the issue of production of record of enquiry by the respondent-bank before the Labour Court vide application dated 29.08.2018, I find that what was produced is mere proceedings of the enquiry which were already supplied to the petitioner. Therefore, no prejudice can be said to have been caused to him on account of production of such record before the Labour Court.

15. On the aspect of adequacy of evidence to support the charges, I find that the bank examined Mr. Narhari Vasudev Adgaonkar as its witness who was cross examined by the petitioner. The Labour Court has recorded following findings on the issue of perversity in Award – I.

13 It is not disputed that the second party was referred to the Medical Board by the second party. The second party appeared before the Medical Board. The second party was medically examined by the Medical Board. After his medical examination, the Board has issued the certificate. According to the said medical certificate, the second party is suffering from Hepatitis-B and he required one Tablet Entacavir .5 mg BD till 2010 and thereafter he is not required to consume the said Tablets. The said certificate is issued by the Medical Board after medical examination of the second party/workman which prescribes that the second party was not longer required said Tablets. This certificate has stronger evidential value comparing to other medical certificates. The second party has not produced

the prescription of the doctors from whom he was taking the treatment. The second party only submitted that the medical certificates. From the record, it is not disputed that Nayan Medical & General Stores Hudco, Aurangabad has surrendered his Drug License in the year 2010. If the said medical store is closed in the year 2010 how he supplied the medicine to the second party is not explained by the second party in the entire proceeding. Once, the Drug License is surrendered and medical shop is closed how the Manager of Medical Shop Keeper used to make Home Delivery of the medicine to the second party. The medical bills do not disclose that it was home delivery. Once, the drug license is surrendered by the above named medical Store, then he has right to give medicines by home delivery by issuing the bills, this aspect is not explained by the second party in entire proceeding. Merely saying that the second party received the medicines from the above medical store by home delivery not appears to be probable in absence of such explanation. This aspect is not explained by the second party in entire proceeding. The conclusive evidence about the surrender of Drug License is produced by the First Party by producing the letter of Food and Drugs Department. Therefore, considering the oral and documentary evidence, it creates doubt about the Medical Bills produced by the second party of Nayan Medical & General Stores Hudco, Aurangabad for purchase of tablets. The said documentary and oral evidence is considered by the enquiry officer in the entire enquiry proceeding. Therefore, I am satisfied that the enquiry officer has appreciated the entire evidence produced in the departmental enquiry. The enquiry officer relied on oral and documentary evidence and come to the conclusion. Therefore, the findings of the enquiry officer are based on evidence produced in the departmental enquiry. Therefore, I answer issue no. 02 in negative and pass the following order:

16. It cannot be stated that the above findings recorded by the Labour Court suffer from any of perversity in any manner. Petitioner does not dispute that the license of the concerned medical shop was surrendered in the year 2010 itself, but he went on producing bills of that shop upto August 2013. The defence of

the home delivery of medicines being made by the concerned shop is unbelievable and cannot be accepted in the light of absence of any evidence to that effect being produced by the petitioner.

17. Coming to the issue of proportionality of penalty, the misconduct alleged against the petitioner was of serious nature. He has caused financial loss to the respondent-bank by claiming and receiving reimbursement of Rs. 6,12,870/- which was not due to him. He had submitted further bills amounting to Rs. 3,24,729/- in further attempt to defraud the bank. The punishment of dismissal from service imposed on petitioner for such proved misconduct, in my view is proportionate and does not shock my conscious.

18. So far as issue of non payment of gratuity and pension is concerned, the same was not subject matter of dispute before the Labour Court and the petitioner shall have liberty to adopt such remedies in that regard as may be available to him in law.

19. In the result, I find that the Labour Court has not committed any error in passing Award – I and Award – II. The petition is devoid of merits. Same is dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]