IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2021

DATE OF DECISION : 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.558 of 2015

State Bank of India
represented by its Deputy General Manager
Zonal Office, Kurinji Complex
State Bank Road
Coimbatore 641 018 .. Appellant/Petitioner

-vs-

1. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
First Floor, 25, Haddows Road
Shastri Bhavan
Chennai 600 006

2. Mr.B.Muthukumar .. Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 23.12.2014 made in W.P.No.23923 of 2007.

Prayer in WP.No.23923 of 2007:-
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of 2nd respondent namely the Presiding Officer, Central Government Industrial Tribunal, the Labour court in award dated 18.8.2006 in I.D.No.117/2005 and set aside the same as illegal arbitrary and apposed to law.

For Appellant : Mr.S.Ravindran
Senior Counsel for
M/s S.Bazeer Ahamed

For Respondents : Mr.N.G.R.Prasad for
M/s Row & Reddy for R2
R1-Tribunal

JUDGMENT

T.RAJA, J.

State Bank of India represented by its Deputy General Manager, Coimbatore has brought this writ appeal, having been aggrieved by the impugned order dated 23.12.2014 passed by the learned single Judge in Writ Petition No.23923 of 2007, in and by which the award dated 18.08.2006 passed by the Central Government Industrial Tribunal cum Labour Court (for short, "the Industrial Tribunal") in I.D.No.117 of 2005, setting aside the punishment imposed against Mr.B.Muthukumar, the second respondent herein as illegal, was confirmed.

2. Mr.S.Ravindran, learned Senior Counsel appearing for the appellant-Bank argued that when the charge-sheeted employee, Mr.B.Muthukumar was working as Assistant at Ketty Valley Branch, he had committed several misconducts during the period 1999-2001, therefore, he was placed under suspension during July, 2001, because he raised fictitious credits in various savings bank accounts and posted extraneous credits in the ledger accounts and also fraudulently prepared withdrawal forms forging the signatures of the account holders and passed the same for payments and unauthorisedly obtained payments from the payment cashier. Moreover, the second respondent also raised fictitious entries in the STDR and STDR interest accounts with a view to avoid detection of fraudulent withdrawals made by him in various savings bank accounts; that he had destroyed the account opening forms and transaction sheets and also destroyed the account opening form and ledger sheet pertaining to an inoperative savings account; that he had also destroyed the ledger sheet of savings bank account holder Smt.R.Chandra upto February, 2000, as a result, he withdrew the amounts and made fictitious credit entries in the customers accounts. Hence, charges, numbering 12, were framed against him. After the explanation furnished was found to be not satisfactory, an enquiry officer was appointed who, in the domestic enquiry, held that except two charges, the other charges have been proved and thereafter, the disciplinary authority also, concurring with the findings of the enquiry officer on all the charges except one charge, imposed the punishment of dismissal from service on the delinquent. Aggrieved by the same, the second respondent approached the Industrial Tribunal, the first respondent herein in I.D.No.117 of 2005. On receipt of the reference, the first respondent, framing the following two issues,

> "(i) Whether the action of the Respondent/Management in dismissing the services of Petitioner is legal and justified?
> (ii) To what relief the Petitioner is

entitled?",

passed an award, setting aside the punishment of dismissal, directing the reinstatement of the second respondent into service with continuity of service and all other attendant benefits, but without back wages. Learned Senior Counsel further submitted that once the first respondent-Industrial Tribunal has come to the conclusion that the second respondent is not an innocent person to make fictitious entries and also found that he has colluded with the other officials in the fraud committed against the Bank, the Industrial Tribunal has no legal basis to set aside the punishment of dismissal with the consequential relief of reinstatement without back wages.

3. Arguing further, Mr.S.Ravindran submitted that when the appellant Bank examined 11 witnesses before the enquiry officer and marked 182 documents, the first respondent-Industrial Tribunal failed to refer to any of the witnesses or the documents. Moreover, when the second respondent did not even give any evidence before the enquiry officer in proof of his stand taken in the explanation, the Industrial Tribunal is not justified in brushing aside the well considered findings of the enquiry officer, more particularly, when the enquiry officer has given cogent and convincing reasons, finding him guilty. Taking support from the judgment of the Apex Court in Divisional Controller, KSRTC v. A.T.Mani, (2005) 3 SCC 254, learned Senior Counsel appearing for the appellant argued that once the domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunal and Courts to substitute their subjective opinion in place of the one arrived at by the domestic tribunal. Moreover, the Industrial Tribunal has come to a wrong conclusion that there is no iota of evidence to prove the charge of forgery by the second respondent, ignoring the evidence adduced by the appellant before the enquiry officer. Again assailing the order passed by the learned single Judge, learned Senior Counsel argued that when the Industrial Tribunal has only elicited the contentions made on behalf of the second respondent in paragraphs 8 & 11 of the award, the learned single Judge, without application of mind, has erroneously accepted the said contentions as the findings of the Industrial Tribunal, while dismissing the writ petition. When the Industrial Tribunal has not found anywhere that the second respondent committed the misconduct at the instance of higher officials, the learned single Judge has held that at the instance of the higher officials, the second respondent has committed the misconduct. Without any evidence, the learned single Judge has given a finding that a set of officials were involved in the misappropriation and they were let off with the minor punishment, whereas the second respondent alone was imposed with the punishment of dismissal, when it is nobody's case that the officials were involved in the

misappropriation. Therefore, when the award of the Industrial Tribunal itself is perverse and suffers from manifest errors of law, the learned single Judge, ignoring completely this vital aspect, has wrongly dismissed the writ petition filed by the Bank. Hence, the impugned order is liable to be set aside by allowing this appeal.

4. Mr.N.G.R.Prasad, learned counsel appearing for the second respondent, supporting the impugned order confirming the award passed by the Industrial Tribunal, argued that after the second respondent entered into the service of the appellant Bank in April, 1994 and serving as Assistant at Ketty Valley branch during 1999-2001, the Assistant General Manager, Region-II, Coimbatore served a confidential letter dated 31.7.2001 making several allegations and calling upon the second respondent to submit his reply within 15 days. Accordingly, the second respondent gave his detailed explanation on 29.8.2001 denying the allegations. Again the disciplinary authority, not satisfied with the explanation, issued a charge sheet on 31.12.2001 to the second respondent calling for explanation for certain irregularities/fraud within 15 days. On receipt of the same, the second respondent also submitted his explanation on 30.1.2002. The disciplinary authority ordered for an enquiry on 11.2.2002, the enquiry proceedings commenced, the second respondent sent a written representation on 25.3.2001 to the Assistant General Manager, Coimbatore pointing out certain irregularities made by certain officials and staff, more particularly, Mr.M.Varghese, Cashier. After investigation, the appellant Bank lodged a police complaint and also proceeded departmentally against them. When the enquiry officer has not conducted the enquiry properly and he went against the procedures, because the presenting officer has cross examined the second respondent immediately after the examination of the management witnesses, that shows that the enquiry proceedings were held in utter deviation of the principles of natural justice. After submission of the enquiry report on 21.1.2003, the disciplinary authority forwarded a copy thereof on 6.2.2003 calling for explanation and accordingly, the second respondent gave his explanation on 3.3.2003. Overlooking the same, it was informed that they are proposing to impose the punishment of dismissal from service and finally, the second respondent was imposed with the punishment of dismissal from service treating the period of suspension as suspension. Aggrieved thereby, when an appeal was filed, the appellate authority, without giving personal hearing, disposed of the appeal. The authorities have not even considered the extenuating circumstances before imposing the punishment. No list of witnesses proposed to be examined was given. Moreover, many of the documents were not marked. All the account holders alleged to have been affected on account of the alleged irregularities were not produced, except

a few. Even Mr.M.Varghese was not produced for cross examination, although his representation was marked as PE-177. One another infirmity overlooked by the enquiry officer was that when the xerox copies of the documents were marked and originals were not produced before the enquiry officer, the enquiry officer ought to have rejected the same. Contrary thereto, he has given the findings which are perverse in nature. Therefore, the second respondent raised a dispute. The Industrial Tribunal, entertaining the reference, framed the issue whether the action of the State Bank of India in dismissing the services of Mr.B.Muthukumar, Ex-Assistant is legal and justified, if not, to what relief he is entitled to?

5. Mr.N.G.R.Prasad further argued that the presenting officer has put all leading questions to the management witnesses that is highly improper, based on which the punishment disproportionate to the charges came to be imposed. The Industrial Tribunal, finding that the punishment imposed by the disciplinary authority is not in accordance with the principles of natural justice, coming to the conclusion that there was no iota of evidence produced against the second respondent for the alleged forgery, passed the award setting aside the punishment of dismissal from service directing the appellant to reinstate the second respondent into service without back wages. Mr.Prasad further contended that when the management relied on the statement given by Mr.Varghese, Cashier, the said official has not been examined in the domestic enquiry. Moreover, he was not even cross examined by the second respondent. When there was an allegation of forgery against the second respondent, the management had not stated under what circumstances or proof they have come to the conclusion that the Special Assistant Mr.K.T.Raman has passed the forged withdrawal forms for cash payment without verifying the specimen signature and there was no direct evidence produced to show how they have come to the conclusion that the Cashier Mr.Varghese had paid cash to the second respondent. When the allegation of forgery has not been established in the domestic enquiry, the findings of the enquiry officer and also the disciplinary authority were found to be perverse. Therefore, the Industrial Tribunal interfered with the perverse findings and consequently set aside the dismissal order by holding that even the principles of natural justice have not been followed in this case. Mr.Prasad also relied upon the judgment of the Apex Court in Kuldeep Singh v. Commissioner of Police and others, (1999) 2 SCC 10 for the proposition that if the finding of guilt is reached by the enquiry officer without any evidence, the Court can interfere with the same on the ground that the finding is based on no evidence.

6. Again supporting the findings reached by the learned single Judge, he has further argued that the learned single

Judge has also come to the conclusion that it is a case where a set of officials were involved in the misappropriation, when others were let off with minor punishment, the second respondent alone cannot be imposed with the punishment of dismissal, therefore, the learned single Judge has rightly held that the Industrial Tribunal has correctly exercised its discretion under Section 11-A of the Industrial Disputes Act, 1947. Placing reliance on the judgment of the Apex Court in Balbir Chand v. Food Corporation of India and others, (1997) 3 SCC 371, the learned counsel argued that when several officials were involved in committing irregularities and financial mishandling, there must be a joint enquiry. But in the case on hand, holding a separate enquiry is against the principles of natural justice. When the higher official, namely, the Branch Manager was admittedly let off with a minor punishment, the direction for reinstatement without back wages does not call for any interference, he pleaded.

7. Heard the learned counsel appearing for the parties.

8. The second respondent entered the services of the appellant Bank in April, 1994 and while serving as Assistant at Ketty Valley branch, is said to have committed some misconduct during the period 1999-2001. Therefore, he was placed under suspension during February, 2001. On 31.7.2001, the second respondent was issued with a charge memo alleging inter alia that he made unauthorised withdrawals in the savings bank accounts of various customers; that he raised fictitious credits in various savings bank accounts and posted extraneous credits in the ledger accounts; that he fraudulently prepared the withdrawal forms forging the signatures of account holders and posted them in the ledger accounts and also unauthorisedly obtained payments from the cashier; that he destroyed the account opening forms and transaction sheets pertaining to savings bank accounts and also destroyed the ledger sheet pertaining to savings bank account of Smt.R.Chandra upto February, 2000. The enquiry officer, on completion of the enquiry, submitted his report on 24.1.2003 holding that nine charges have been proved and one charge as partly proved, out of 12, against the second respondent. The disciplinary authority, concurring with the findings of the enquiry officer on all except one charge, held that Mr.B.Muthukumar, Assistant, Ketty Valley branch was guilty of the charges levelled against him. One of the charges shows that the second respondent used to fill the vouchers on behalf of customers who do not know how to fill up the vouchers. When there were allegations of 34 fictitious credits made from 1999-2001 in various savings bank accounts, he chose to withdraw the amounts by forging the signatures of the account holders in the withdrawal vouchers. However, in the reply dated 30.1.2002, the second respondent has partially

admitted his involvement. The relevant portion is given as under:-

> "Though the Respondent/Bank has stated that they have taken action against the Manager Mr.John Devadoss, who has passed the related vouchers and who was alleged to be negligent in his duties, they have awarded a punishment of reduction in basic pay by four stages for one year, whereas the Petitioner who prepared the vouchers as per the direction of the Manager has been awarded an exemplary punishment of dismissal."

9. When the second respondent contended that the Cashier Mr.Varghese was responsible for this malpractice; that Mr.John Devadoss, the then Branch Manager was also behind all these incidents and also further implicated Mr.K.T.Raman, he did not speak before the enquiry officer about their involvement. In any event, when the second respondent took a stand that Mr.K.T.Raman, Mr.Varghese and Mr.John Devadoss were let off, whereas he was made as a scapegoat, the enquiry officer, in our considered opinion, has reached a right finding holding the second respondent guilty of nine charges and one as partly proved. Further, the appellant also initiated departmental proceedings against Mr.Varghese, Mr.John Devadoss and Mr.K.T.Raman, however, finding the involvement of the second respondent, the disciplinary authority imposed the major punishment of dismissal. But the Industrial Tribunal, even though held that the second respondent is not an innocent to make such fictitious entries/credits, misplacing the case, has wrongly interfered with the findings of the enquiry officer and the disciplinary authority.

10. Moreover, coming to the charges levelled against the second respondent and other officials, charge (a) dealing with raising of fictitious credits by the second respondent in various savings bank accounts, has been proved against him and also against Mr.K.T.Raman, Mr.M.Varghese and Mr.John Devadoss. Charge (b) showing that the second respondent had fraudulently prepared the withdrawal forms noted therein forging the signatures of the account holders, posting the same in the ledger accounts, passing the same for payment and unauthorisedly obtained payments from the cashier, also stood proved against the second respondent and Mr.K.T.Raman, Mr.M.Varghese, but partly proved against Mr.A.John Devadoss. Charge (c) showing that the second respondent fraudulently prepared the withdrawal forms noted therein forging the signatures of the account holders, also has been proved against the second respondent and Mr.M.Varghese and Mr.John Devadoss. Charge (d) showing that the second respondent fraudulently prepared a withdrawal form

forging the signature of the account holder pertaining to the account of one K.Gunasekaran for Rs.10,000/- on 2.1.2001, also has been proved against him, but not against the other officials. Similarly, although charge (e) has not been proved and charge (f) has been partly proved, charges (i), (j) have not been proved against the second respondent, charges (k) & (l) have been proved only against the second respondent, but not against others. Therefore, considering the gravity of the charges, the enquiry officer has found the second respondent guilty and the disciplinary authority imposed the major punishment on him and against others, the disciplinary authority imposed lesser punishment. Without looking into this, the Industrial Tribunal has disturbed the findings and the learned single Judge also overlooked the said vital aspects. When the second respondent was found guilty of raising fictitious vouchers, fraudulently preparing withdrawal forms, forging the signatures of account holders etc., the punishment awarded by the disciplinary authority to keep the Bank in order, should not have been interfered with by the Industrial Tribunal without there being any valid ground therefor.

11. Moving to the contention of the learned counsel appearing for the second respondent, relying upon the judgment of the Apex Court in Balbir Chand v. Food Corporation of India Ltd and others, (1997) 3 SCC 371, that a joint enquiry should have been conducted against all the delinquent officials without singling out the second respondent for awarding the major punishment, whereas others were let off with a minor punishment, the said judgment cannot lend any help to the second respondent, as the Apex Court has vividly held in the very same judgment that merely because one of the officers was wrongly given the lesser punishment compared to others against whom there is a proved misconduct, it cannot be held that they too should also be given the lesser punishment.

12. Moreover, in the present case, the Industrial Tribunal found that the second respondent is not an innocent to make fictitious entries and he has also colluded with the other officials in the fraud committed against the appellant Bank. Having given such a finding against the second respondent, it is not legally permissible to disturb the finding of guilt arrived at by the enquiry officer that was confirmed by the disciplinary authority. Useful reference can be had from the judgment of the Apex Court in Janatha Bazaar South Kanara Control Co-operative Wholesale Stores Ltd., & others v. Secretary, Sahakari Noukarara Sangha & others, 2000 (2) LLJ 1395, wherein the Apex Court has held that once the Labour Court gives a finding of guilt, there is no justification to disturb the punishment.

13. In the light of the above, when the enquiry officer has

found the second respondent guilty of nine charges in addition to one partly proved charge and the disciplinary authority also, concurring with the findings of the enquiry officer on all, except one charge, thought it fit to impose the manor punishment of dismissal on the second respondent, overlooking these vital aspects, the learned single Judge has materially erred in confirming the award passed by the Industrial Tribunal directing reinstatement without back wages, by showing undeserving sympathy on the delinquent. Therefore, both the impugned order passed by the learned single Judge and the award dated 18.8.2006 passed by the Central Government Industrial Tribunal cum Labour Court, Chennai are set aside and the writ appeal stands allowed. Consequently, M.P.No.1 of 2015 stands closed. However, there is no order as to costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court
First Floor, 25, Haddows Road
Shastri Bhavan
Chennai 600 006

2. The Deputy General Manager
State Bank of India
Zonal Office, Kurinji Complex
State Bank Road
Coimbatore 641 018

+1cc to M/s.N.G.R.Prasad, Advocate, S.R.No.5374

+1cc to Mr.S.Bazeer Ahamed, Advocate, S.R.No.5033

W.A.No.558 of 2015

SRA(CO)
SU(08/02/2022)