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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 31.8.2022*
Pronounced on: 12.09.2022

\+ **W.P.(C) 8858/2007 and C.M. No. 16754/2007**

BANK OF INDIA ..... Petitioner

Through: Mr. Rajat Arora and Mr. Niraj Kumar, Advocates.

versus

SURESH CHAND ..... Respondent

Through: Mr. Maroof Ahmad and Mr. M.K. Khan, Advocates.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G E M E N T

GAURANG KANTH, J.

1. The Petitioner in the present Writ Petition is aggrieved by the Award dated 07.08.2007 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court-II, Rajendra Bhawan, New Delhi in ID No. 111/2005 titled as *Suresh Chand Vs Zonal Manager, Bank of India* **("impugned Award")**. Vide the impugned Award, the learned Industrial Tribunal was pleased to direct the reinstatement of the workman with 50% back wages and continuity of service and all other consequential benefits after stopping all increments for 7 years.

Facts relevant for the consideration of the present Writ Petition are as follows:

2. The Respondent/Workman was working as clerk cum Cashier at the Jhadewalan Branch of the Petitioner Bank from 31.01.2000 to

29.08.2002. While working at the Jhadewalan Branch, the Respondent/Workman applied for a loan of Rs.1 Lakh from the Nationalized Bank Employees SE Cooperative NA Thrift and Cooperative Society **("Society")**. Apparently, there was default in repayment of loan and hence the Society contacted the Petitioner Bank and asked to deduct the overdue amount from the salary of the Respondent Workman. The Society further forwarded the loan documents submitted by the Respondent workman to the Petitioner Bank. On perusal of the said loan document, the Petitioner Bank realized that the Respondent/workman forged the signature of the Branch Manager Mr.K.S Mehra in a 'no objection certificate' dated 26.01.2002 to obtain the loan from the Society.

3. Hence the Respondent/Workman was served with a Charge Sheet dated 08.09.2003. After conducting the enquiry, the enquiry officer submitted a report dated 15.12.2003 holding the charges against the Respondent/Workman as *'proved'*. The Disciplinary Authority issued show cause notice to the Respondent/Workman proposing the penalty of discharge from service. After giving personal hearing to the Respondent, the disciplinary authority vide order dated 24.01.2004 confirmed the penalty of *'discharge with superannuation benefits and without disqualification from future employment in terms of Para 6(d) of the Memorandum of Settlement dated 10.04.2002'* on the Respondent Workman.

4. The Respondent/Workman challenged the order of the Disciplinary Authority before the Appellate Authority. Vide order dated 07.05.2004, the Appellate Authority rejected the said Appeal.

5. The Respondent/Workman raised an industrial dispute before the Conciliation Officer. After the failure of the conciliation proceedings, the appropriate Government referred the following reference to the Industrial Tribunal for adjudication:

> *"Whether discharging the services of the Workman Sh. Suresh Chand from the Management of Bank of India is just, fair and legal? If not, to what relief the Workman is entitled to and from which date?"*

6. The Respondent/Workmen filed his statement of Claim alleging that the Petitioner management conducted the domestic enquiry not in accordance with the prescribed procedure and also without following the principles of natural justice. The Petitioner/Management filed the written statement pointing out that the Respondent/Workman has been inflicted with a penalty of *'discharge with superannuation benefits'* after following due process of law. The Domestic enquiry conducted by the Petitioner/Management was in accordance with law and the Respondent/Workman has been given opportunity to represent himself at every stage.

7. Both the parties led their respective evidence to substantiate their claims. The learned Tribunal, after examining the entire record concluded that the Petitioner/Management conducted the domestic enquiry after granting sufficient opportunity to the Respondent/Workman. Further there was no violation of the principles of natural justice. However, the learned Tribunal interfered with the punishment imposed by the Petitioner/Management on the ground that there were similarly situated employees who committed similar offences and the Petitioner/Management imposed lesser punishment on them. After

examining the totality of the case, the learned Tribunal directed for the reinstatement of the Respondent/Workman with 50% back wages and continuity of service and all other consequential benefits after stopping increments for 7 years.

8. Being aggrieved by the impugned Award, the Petitioner/Management filed the present Writ Petition.

Submission on behalf of the Petitioner

9. Learned Counsel for the Petitioner/Management submitted that the learned Tribunal held that the domestic enquiry conducted by the Petitioner/Management is in accordance with law. Once having upheld the validity of the enquiry, learned Tribunal could not have interfered with the quantum of punishment. Relying upon the Judgments of the Hon'ble Supreme Court in ***State of UP Vs Shankar Lal*** **(2006) II LLJ 219,** ***Divisional Controller, KSRTC Vs A.T Maine*** **2005 SCC L&S 407,** ***MP Electricity Board Vs Jagdish Chandra Sharma*** **2005 SCC L&S 417,** ***BHEL Vs M Chandrashekhar*** **2005 I LLN 1051**, learned Counsel for the Petitioner submitted that the discretion with respect to the quantum of punishment is a matter which is best left to the departmental authorities and the Tribunal/Courts may not interfere with the same. The Respondent/Workman committed grave misconduct by forging the documents and hence he does not deserve any sympathy. It is further contended by the learned Counsel for the Petitioner that the integrity of the Bank employees should be above board and hence, since the Petitioner/Management lost their trust in the Respondent/Workman, they are right in imposing the punishment. Learned Counsel for the Petitioner/Management further submitted that Article 14 cannot be

invoked in disciplinary proceedings. Gravity of the offence will vary according to the position they are holding. The Petitioner being the employer is entitled to give different punishments to different employees for the same offence depending upon the position they are holding. With these submissions, learned Counsel prays for the setting aside of the impugned Award.

Submission on behalf of the Respondent

10. The learned Counsel for the Respondent/Workman argued in support of the impugned Award. It is his submission that 7 other employees were charged with the same offence and 5 of them were retained in service with reduction in their pay scale. It is his case that one Mr. Ashok Kumar was charged with the same offence, but he has given a punishment of stoppage of increment for 7 years. Learned Counsel for the Respondent/Workman submitted that the Petitioner/Management being a public sector bank, cannot discriminate among its officers. With these submissions, he prayed for the dismissal of the present Writ Petition.

Legal Analysis based on the Facts of the present case

11. This Court heard the arguments advanced by the learned Counsel for the parties and has examined the entire record of the present case.

12. It is the case of the Petitioner/Management that the Respondent/Workman forged the signatures of the Officer in Charge, Mr.K.S Mehra and based on the said documents, he obtained a loan from the society. The Petitioner/Management conducted a domestic enquiry after affording opportunity to the Respondent/Workman to defend himself. Learned Tribunal after examining the case in detail concluded

that the domestic enquiry conducted by the Petitioner/Management was in accordance with law and principles of natural justice have been complied with. However, the learned Tribunal proceeded on the basis that there were 7 other employees of the Bank who were charged with identical charges. Out of which 5 of them were retained in service by reducing their increments whereas the Respondent has been discharged from service with superannuation benefits and without disqualification from future employment. Hence the learned Tribunal held that there is violation of Article 14 of the Constitution. Based on the said reasoning, the learned Tribunal proceeded and modified the punishment.

13. Hence the first question to be examined is whether the Industrial Tribunal has power under Section 11A of the Industrial Disputes Act, 1947 to interfere with the punishment inflicted on an employee by the Management.

14. The Hon'ble Supreme Court in ***The Workmen of Firestone Tyre & Rubber Co Vs The Management & Ors*** reported as ***1973(1) SCC 813***, examined the change of law brought by the introduction of Section 11 A to the Industrial Disputes Act, 1947 and held as follows:

> *"We have indicated the changes effected in the law by section 11 A. We should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This Court has consistently been holding that an employer is expected to hold a proper enquiry according to the Standing Orders and principles of natural justice. It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions*

> *arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer."*

15. Hence after the introduction of Section 11A, now the Industrial Tribunal have the power to interfere with the punishments. However, cogent reasons should be recorded for the same.

16. In the present case, the Ld. Tribunal in the impugned Award noted that there were 7 employees against whom identical charges were imposed. In all cases, charges were proved. Out of the 7 Workmen on whom similar charges were proved, 5 of them were retained in service by imposing the penalty of reduction in increments. One person was dismissed from service and the Respondent Workman was discharged from service with superannuation benefits. Hence according to the Ld. Tribunal, there is discrimination as there was no justification offered by Petitioner/Management on how the Respondent/Workman's case is different from the other similarly situated employees against whom lesser punishments were imposed.

17. The Hon'ble Supreme Court in ***Anand Co.op Oil S. Union Vs Shailesh Kumar Harshadbhai Shah*** reported as ***2006(6) SCC 548***, was handling a similar situation and held as follows:

> *"There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.*
>
> *The First Respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the First*

> *Respondent has succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.1.2003 as affirmed by the High Court is substituted by a direction that the First Respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof."*

18. The learned Tribunal interfered with the penalty imposed by the Petitioner/Management as the Respondent/Workman was discriminated against similarly situated employees. As discussed herein above, the learned Tribunal has the power under Section 11A of the Industrial Disputes Act, 1947, to differ from the conclusions arrived at by the Petitioner/Management. The view taken by the learned Tribunal in the present matter is similar to the view expressed by the Hon'ble Supreme Court in ***Anand Co.op Oil S. Union (supra)*.**

19. In view of the discussions herein above, this Court finds no infirmity or perversity in the Award passed by the learned Tribunal. Hence this Court is not inclined to exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India and the present Writ Petition is accordingly dismissed. No order as to costs.

GAURANG KANTH
(JUDGE)

SEPTEMBER 12, 2022