

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21575 of 2012

Bank Of India R. Block, Birchand Patel Marg, Patna ... Petitioner
Versus

1. The Union Of India New Delhi
2. The Central Govt. Industrial Tribunal No. 1, Dhanbad No. 1, Dhanbad Through Union Of India
3. Sri Rajesh Kumar S/O Shri Ramashish Pandey Resident Of Village-Babhani, P.O.- Lahthua, P.S.- Mohanpur, District- Gaya ... Respondents

Appearance :

For the Petitioner : M/s Suresh Pd. Singh & Kumari Rashmi, Advs.
For the Respondents : Mrs. Kanak Verma, CGC

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

18 07-08-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

“..... for quashing the award dated 02.07.2012 passed by the Presiding Officer, Industrial Tribunal No. 1, Dhanbad in I.D. Case No. 2/12, whereby and whereunder after quashing/setting aside the punishment order dated 25.01.2010 the Management has been directed to reinstate the Respondent No. 3 (Shri Rajesh Kumar) in service with 50% back wages and other consequential benefits within 30 days from the publication of award in the Gazette of India and prayer that the implementation of the said award be stayed till the disposal of the present writ application.”

3. The present Writ Petition is filed by the employer.

The Respondent No. 3 is the employee. Learned counsel for the petitioner has stated that the Industrial Tribunal without taking into account the various grounds raised by the petitioner has passed the award, dated 02.07.2012, in a mechanical and



pedantic manner, setting aside the order of punishment passed by the disciplinary authority, dated 25.01.2010. That the Industrial Tribunal while passing the award has directed the reinstatement of the Respondent No. 3 herein along with 50% back wages and other consequential benefits.

4. Learned counsel has stated that the Disciplinary Authority concerned duly taking into consideration the fact that the Respondent No. 3 has misappropriated the amounts of some of the Bank customers has initiated disciplinary proceedings. Thereafter, the Respondent No. 3 was put on notice and his explanation was called for. After noting that the explanation was not satisfactory an enquiry officer was appointed. The enquiring officer has conducted the enquiry in accordance with the procedure and based on the material evidence came to the conclusion that the Respondent No. 3 was guilty of the charges framed and the Respondent No. 3 was dismissed from service. Learned counsel has stated that the petitioner, herein, is a Bank and the employees who are working for the Bank have a fiduciary relationship with the customers and in case the employees are allowed to misappropriate the amounts of the customers, the trust of customers in the Bank will be eroded, therefore, the employees are required to maintain a high degree



of integrity while discharging their duties. Learned counsel has stated that the Respondent No. 3 has taken amounts from some of the Bank customers but, has not deposited the amount into the customers accounts and misappropriated the said amount. The conduct of the Respondent No. 3 in misappropriating the amount of the customers amounted to misconduct and liable for punishment. The disciplinary authority duly following the procedure as contemplated under the law has passed the order, dated 25.01.2010, dismissing the Respondent No. 3 from service. The employee has challenged the order of dismissal before the Industrial Tribunal and the Industrial Tribunal without considering the fact that the charges against the petitioner were very grave has passed the award setting aside the order of the disciplinary authority and directed for reinstatement with 50% back wages and other consequential benefits. Learned counsel has stated that the Tribunal did not have the authority to interfere with the orders of the Disciplinary authority and, therefore, has to be necessarily set aside.

5. Learned counsel has relied on the Judgments in the case of State of Haryana & Anr. Vrs. Rattan Singh, reported in (1997) AIR (SC) 1512, Baikunth Nath Das & Anr. Vrs. Chief District Medical Officer, Baripada & Anr., reported in 1992



AIR(SC) 1020, United Bank of India Vrs. Bachan Prasad Lall, reported in 2022 AIR (SC) 943, Shivaraj V. Patil Vrs. Hotilal & Anr., reported in 2003 6 AIC 594 and Madhya Pradesh Electricity Board Vrs. Jagdish Chandra Sharma, reported in (2005) 3 SCC, 401 to buttress his contentions.

6. Per contra the learned counsel appearing on behalf of the Respondent No. 3 has stated that the order of the Industrial Tribunal does not suffer from any legal infirmity or perversity. The Tribunal has rightly passed the award, dated 02.07.2012, setting aside the order of the disciplinary authority and directing the petitioner-Bank to reinstate the Respondent No. 3 with 50% back wages and other consequential benefits. Learned counsel has stated that without there being any iota of evidence to substantiate the charges levelled against the Respondent No. 3, the disciplinary authority has passed the order of dismissal from service based on surmises and conjunctures. The Tribunal duly taking into account that none of the customers whose money is alleged to have been misappropriated have deposed against the Respondent No. 3 has rightly passed the impugned award duly setting aside the order of dismissal from service. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.



7. A perusal of the record reveals that the Respondent No. 3 who is employee of the petitioner-Bank was charged with having misappropriated the amounts given by some of the customers of the Bank which were given for the purpose of depositing the same into their respective accounts. The Respondent No. 3 was put on notice and his explanation called for, the authority having not been satisfied with the said explanation submitted by Respondent No. 3 has appointed an enquiry officer. The enquiry officer has conducted the enquiry and submitted his report holding that the charges framed against the Respondent No. 3 were proved. Thereafter, the disciplinary authority has passed the order dismissing the Respondent No. 3 from the service.

8. A perusal of the charge sheet filed against the petitioner shows that the main allegation against the Respondent No. 3 is that one of the customers of the Bank by name Mrs. Geeta Devi has deposited an amount of Rs.5500/- by cash by duly filling in the pay-in-slip but the Respondent No. 3 has not deposited the amount into the account even though the counter foil of the pay-in-slip was initialed and the seal of the Bank was stamped. The second charge is that another Bank customer by name Sri Narendra Kumar had deposited an amount of Rs.



14,000/- in his account along with the pay-in-slip and the Respondent No. 3 has affixed his initial on the counter foil and seal of the Bank was stamped, but, the Respondent No. 3 did not deposit the amount of Rs.14,000/- on the same day. Instead of depositing the amounts into the accounts of the customers the Respondent No. 3 made a false entry in the pass book of the customer and the amount of Rs.14,000/- was subsequently deposited in the Bank on 01.11.2008. The enquiry officer examined some of the employees of the Bank, i.e., the Manager, Senior Manager and another Officer of the Bank and documents ME 1 to ME 18 were marked on behalf of the management. On behalf of the Respondent No. 3 documents BE 1 and BE 2 were marked. It is to be noted that the customer whose money is stated to have being misappropriated have not being examined by the Management. Thereafter, the enquiry officer submitted his report stating that both the charges against the Respondent No. 3 stood proved. The disciplinary authority based on the enquiry report has terminated the services of the Respondent No. 3 with punishment of compulsory retirement. Thereafter, the Respondent No. 3 has preferred an appeal before the General Manager and the General Manager vide order, dated 13th April, 2010, has dismissed the appeal conforming the order



of the disciplinary authority, dated 25.01.2010. The Respondent No. 3 has approached the Central Government Industrial Tribunal at Dhanbad and the Central Government Industrial Tribunal has passed the award, dated 02.07.2012, setting aside the orders of the disciplinary authority as well as the appellate authority and directed the petitioner-Bank to reinstate the Respondent No. 3 with 50% back wages and other consequential benefits.

9. A perusal of the award reveals that the Tribunal was swayed by the fact that the enquiry officer has failed to examine the original complainants, i.e., the customers of the Bank whose money is stated to have misappropriated. The Tribunal was of the view that the non-examination of the customers was fatal to the entire enquiry and in the absence of any evidence by the customers whose money is stated to have being misappropriated the enquiry officer ought not to have given a finding that the charges against the Respondent No. 3 were proved. Further, the documents filed by the Respondent No. 3 before the enquiry officer, ie., BE 1 and BE 2 which are statements given by the customers were not taken into consideration by the enquiring officer. Both the documents marked on behalf of the Respondent No. 3, i.e., BE 1 and BE 2 are statements given by



the Bank customers to the effect that they do not have any grievance as complaint against the Respondent No. 3.

10. Admittedly, in this case even though an allegation is made against the Respondent No. 3 that he has misappropriated the amount of two of the customers of the Bank, the Bank official for reasons best known to them have not examined the said customers. More over, it is not a case where the petitioner has misappropriated the amounts of the Bank admittedly in this case the amounts were credited to the accounts of the customers and the customers have given a sworn affidavit that they do not have any complaint or grievance against the petitioner. Their affidavits were not taken into consideration by the Disciplinary Authority.

11. This Court is of the opinion that the non-examination of the crucial witnesses, i.e., the customers of the Bank whose amounts were alleged to have been misappropriated is fatal to the entire case set-up by the Bank against the Respondent No. 3. Non-examination of the crucial witnesses, i.e., the customers of the Bank whose money is alleged to have been misappropriated cannot be countenanced and, therefore, the finding recorded by the enquiry officer that the charges against the Respondent No. 3 were proved is



without any substance or evidence on record. The Tribunal has rightly come to the conclusion that the orders of the appellate as well as the disciplinary authority suffer from this legal infirmity and this Court is in complete agreement with the findings and reasons recorded by the Tribunal for setting aside the order of the disciplinary authority and the Appellate Authority. Though the counsel for the petitioners has relied on the judgments cited above, with all due respect to the counsel, the same are not applicable to the facts of this case and are distinguishable and, therefore, of no use.

12. For the aforementioned reasons, this Court does not find any merit in the present writ petition, which warrants any interference for setting aside the award of the Tribunal. The Writ Petition is, accordingly, **dismissed** confirming the award of the Tribunal, dated 02.07.2012.

(A. Abhishek Reddy , J)

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