IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2023

DELIVERED ON : 13.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.12085 of 2014

P.Sekaran ... Petitioner

-Vs-

1. The Presiding Officer,
   Central Government Industrial Tribunal
   cum Labour Court,
   I Floor 'B' Wing,
   No.26, Haddows Road,
   Shastri Bhawan,
   Chennai 600 006.

2. The Functional Manager – HRD,
   Punjab National Bank,
   No.160, Greams Road,
   Chennai 600 006. ... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, after calling for the concerned records from the first respondent, quash the Award of the first respondent Central Government Industrial Tribunal Court dated 03.05.2013 in I.D.No.81 of 2007 and consequently direct the second respondent to reinstate the petitioner with full backwages, continuity of service and all other attendant benefits, award cost.

For Petitioner : Mr.Balan Haridas

For Respondents
R1 : Court
R2 : Mrs.S.R.Sumathy

ORDER

This Writ Petition has been filed challenging the Award passed by the first respondent in I.D.No.81 of 2007 dated 03.05.2013, thereby dismissed the Industrial Dispute raised by the petitioner as against the order of dismissal from his service.

2. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

3. The petitioner had joined in the service of the second respondent as a Clerk cum Godown Keeper on 23.04.1984. On 01.02.2003, he was transferred to West Boulevard Branch, Trichy. While being so, he was suspended from service on 22.04.2003, alleging that he had collected some amounts and defrauded the bank by renewing the

payment of Fixed Deposit Receipts. He had also handed over the cash order for Rs.10,700/- and transferred to the operative account of Branch office and managed to make Fixed Deposit receipt by collecting the inoperative cash order through clearing Clerk. Subsequently, the petitioner was served with a charge memo dated 23.09.2003 with a show cause notice. The petitioner submitted his explanation for the charge memo. Without being satisfied with the explanation submitted by the petitioner, enquiry was ordered. On receipt of enquiry report, the petitioner was given show cause notice. On receipt of the same, the petitioner submitted his explanation.

4. On perusal of the explanation as well as the findings of the Enquiry Officer, disciplinary authority dismissed the petitioner from service by an order dated 31.03.2006. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed, confirming the order passed by the disciplinary authority. Hence, the petitioner raised an Industrial Dispute before the first respondent in I.D.No. 81 of 2007. By an order dated 03.05.2013, the first respondent also confirmed the order of dismissal. Aggrieved by the same, this writ

petition has been filed.

5. The learned counsel for the petitioner would submit that the Tribunal, without analyzing the enquiry report and without reference to any of the documents, mechanically concluded that the findings of the Enquiry Officer is just and fair. The first allegation levelled against the petitioner is that one C.Thangaraj has taken a fixed deposit on 14.11.1997 for a sum of Rs.80,000/- for a period of 13 months. It got matured on 14.12.1998. On the same day, another Fixed Deposit for a sum of Rs.85,000/- for a period of 13 months in the name of one Annalakshmi and another Fixed Deposit for a sum of Rs.85,000/- for a period of 13 months in the name of one Vasudevi were also taken. Those deposits got matured on 14.12.1998, but not renewed. The ledger pertaining to those Fixed Deposits, as per the practice and rule, were carry forwarded to the overdue fixed deposit ledger. Therefore, the petitioner did not commit any deviation in the procedure.

6. The petitioner was working as a Clerk and he was looking after

the Fixed Deposit accounts, apart from other works. On 07.03.2001, the Branch Manager of the Industrial Area Branch was asked to renew the three overdue fixed deposits along with the accrued interest for a period of 48 months, with effect from 14.12.1998. The maturity date of the fixed deposit was on 14.12.2002. Accordingly, the petitioner had prepared vouchers and the said vouchers were enclosed and prepared a ledger sheet. The renewed fixed deposit receipts were generated and signed by the Manager and the officer concerned. Therefore, the petitioner did not commit any fault and there was no loss to the Bank so far. The petitioner had no role to play in the renewal of Fixed Deposit. Being a Clerk, he had renewed three Fixed Deposits as per the instructions issued by the Branch Manager. Once the voucher is authorized by the Manager, it only confirms the transaction is perfect in all respects to his satisfaction. Therefore, the entire findings of the first respondent are perverse and it is liable to be set aside.

7. In support of his contentions, he relied upon the Judgment of

the Hon'ble Supreme Court of India reported in ***1973 1 SCC 813*** in the case of ***The Workmen of M/s Firestone Tyre and Rubber Co. of India Pvt.Ltd Vs The Management and others,*** in which the Hon'ble Supreme Court of India held that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence by itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, Section 11A gives full power to the Tribunal to go into the evidence and satisfy-itself on both these points. The jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry.

8. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***2008 12 SCC 331,*** in the case of ***Man Singh Vs State of Haryana and Others,*** in which it was held that the concept of equality as enshrined in Article 14 of the Constitution of India embraces

the entire realm of State action. It would extend to an individual as well, not only when he is discriminated against the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. The administrative action is to be just on the test of 'fair play' and reasonableness.

9. He also relied upon the Judgment of this Court in ***W.P.No.22895 of 2008*** in the case of ***A.Thangavelu Vs. Presiding Officer, Central Government Industrial Tribunal cum Labour Court, I Floor, B Wing, No.26, Haddows Road, Shastri Bhavan, Chennai-600 006 and another,*** in which this Court held that Tribunal ought to have considered the extenuating circumstances in favour of the petitioner while coming to a finding other than the finding rendered in the domestic enquiry by relying upon Section 11-A of the Act. No such exercise has been undertaken by the Tribunal and the Tribunal has merely endorsed the enquiry findings regardless of lacunae and infirmities pointed out by the petitioner.

10. He also relied upon the Judgment of Hon'ble Division Bench of this Court in ***W.A.No.595 of 2018*** in the case of ***State Bank of India rep. by its Deputy General Manager, Zonal Office, Coimbatore Vs A.Thangavelu and another,*** in which this Court held that the absence of consideration of section 11-A of the Industrial Disputes Act by the Tribunal, especially, when the Tribunal had initially endorsed the contentions raised by the employee, but, concluded against him on the basis of its own observations. Therefore, the learned Single Judge rightly interfered with the decision of the Tribunal and directed to impose lesser punishment as the punishment imposed was found to be disproportionate with the gravity of the misconduct.

11. A perusal of the counter filed by the second respondent and the submission of the learned counsel for the second respondent revealed that the petitioner was charged with the following charges:-

" i) Fraudulently preparing vouchers for 3 Fixed Deposit Receipts (FDRs) dated 14.11.1997 (with maturity dated 14.12.1998) favouring C. Thangaraj, Annalakshmi and Vasudevi for 48 months from 14.12.1998 without any letter.

ii) Renewed the FDRS without receipt of original FDRS.

iii) Issued fresh FDRS without obtaining original FDRs.

iv) Carried out unauthenticated alterations in the maturity value and due dates.

v) Carried out all details of FDR to a new ledgersheet for making alterations in the initials of the beneficiary of FDR account no 34070 of 'C. Thangaraj to "G. Thangaraj' and also changed the address of the party.

vi) Created record in the new ledger sheets, as if fresh AOF Form - 15H and Photographs were obtained whereas neither AOF Form nor 15H Form/photographs were obtained at the time of renewal.

vii) Created vouchers for renewal of FD account of 'C. Thangaraj knowing fully well that the party was no more and reported expired.

viii) FDR account no 3470 was renewed as ordinary FDR no 464 for a period of 30 days in the name of G. Thangaraj (against FDR of C. Thangaraj).

ix) Proceeds of same were paid by cash order 13.01.2003 in the name of Thangaraj on 14.01.2003.

x) Verified the signature of G. Thangaraj on the back of cash order without any authority knowing fully well that the signature does not belong to the original deposit holder

xi) FDRS favouring Annalakhsmi and Vasudevi were renewed and closed altering the material value and made part payment and kept Rs.1.00 lakh each in the ordinary FD for 91 days. Balance amount of Rs.42,252/- each as interest was issued as cash order dated 22.01.2003 in the names of Annalakshmi and Vasudevi to fictitious persons. He unnecessarily visited branch at Industrial area on 26.02.2003 even though he was posted at WB Road.

xii) He was instrumental in getting the payment fraudulentaly to some fictitious persons.

xiii) On 26.02.2023 he has taken cash order dated 19.04.2002 for Rs.10.700/- favouring C.Velusamy from loans department and handed over the same at BO WB road branch for placing FD in the name of Velusamy without AOF or other documents."

12. It proved that the petitioner had acted fraudulently with deliberate intention to defraud the original depositors and also the Bank. In fact, the petitioner submitted his letter dated 12.04.2003 on his own handwriting, thereby admitted the charges leveled against him. However, later he had withdrawn the same without any valid reasons. Though he had withdrawn the said admission, the admission with regard to the charges stand good in the eye of law.

13. A perusal of the records also revealed that those Fixed Deposit receipts were renewed by the petitioner without production of original Fixed Deposit receipts that too without the presence of original depositors. The Presenting Officer had examined P.W.4, on behalf of the beneficiaries and produced the original Fixed Deposit Receipts. Admittedly, the renewal of Fixed Deposit Receipts lying in overdue Fixed Deposit without originals. He prepared a new Ledger Sheet with change of address obtaining fresh proof against the guidelines.

14. Insofar as the contentions raised by the learned counsel for the petitioner that the Tribunal failed to act as per Section 11A of the ID Act is concerned, it considered the gravity of the offence and whether the same is shockingly disproportionate. A perusal of records further revealed that the petitioner could legitimately be found guilty of the misconduct and has been so found what remains for consideration is regarding his punishment. The charges were proved by proper evidence against the petitioner.

15. The petitioner prepared vouchers on 07.03.2001 for three Fixed Deposits dated 14.11.1997 in favour of C.Thangaraj, Annalakshmi and Vasudevi for a sum of Rs.80,000/-, Rs.85,000/- and Rs.85,000/- respectively for a period of 48 months from 14.12.1998 without any request from the beneficiary or the authorized officer. The said beneficiaries were prepared without receiving the original Fixed Deposit receipts. Further, there were unauthenticated alternations in the maturity value and due dates.

16. Thereafter, the new Fixed Deposit Receipts were issued at the time of renewal instead of noting the details in the original Fixed Deposit

receipts which were not produced. He also changed the initial of the depositor from C to G and changed the address without any proof. He prepared the voucher for renewal of Fixed Deposit account of the said C.Thangaraj even after his demise. Therefore, the petitioner knowing fully well that the said C.Thangaraj died and the voucher for renewal of Fixed Deposit was prepared by the petitioner. On 13.01.2003, the Fixed Deposit account was closed and the entire proceeds were paid by cash on the same day in the name of G.Thangaraj to a person on 14.01.2003. He also endorsed that he had verified the signature of G.Thangaraj on the back of the cash order. Similarly, the Fixed Deposit Receipts in favour of Annalakshmi ahd Vasudevi were renewed as ordinary Fixed Deposits on the same day i.e., on 13.01.2003. Thereafter, a sum of Rs.1,00,000/- each which were placed in ordinary Fixed Deposit for 91 days. The balance amount was paid to fictitious persons in their names on 26.02.2003. Though the petitioner was posted to West Boulevard Branch, Trichy, he visited the Bank on the pretext of collecting income tax details and verified the signatures of the beneficiaries on the said cash orders.

17. Therefore, the Tribunal had rightly come to the conclusion

that the punishment imposed by the disciplinary authority is proportionate to the charges. That apart, on 26.02.2003, during his visit, he had unauthorizedly taken the cash order dated 19.04.2002 for a sum of Rs.10,700/- in favour of C.Veluchamy from the loans department and handed over at Branch office West Boulevard Branch, Trichy, for placing the Fixed Deposit in the name of C.Veluchamy without any proof and other documents. The said C.Veluchamy informed that he neither received nor presented the pay order to the Branch office. He was given enough opportunity during enquiry and there is no violation of Principles of Natural Justice.

18. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand and this Court finds no infirmity or illegality in the order passed by the first respondent in I.D.No.81 of 2007 dated 03.05.2013 and this writ petition is devoid of merits and is liable to be dismissed.

19. Accordingly, this writ petition stands dismissed. No costs.

13.09.2023

Internet : Yes
Index : Yes/No
Speaking order
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To

1. The Presiding Officer,
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   cum Labour Court,
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G.K.ILANTHIRAIYAN, J.

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