IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-8732-2016 (O&M)
Date of Decision: 07.07.2023

MOHINDER KUMAR

…Petitioner

Versus

PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, SECTOR 18, CHANDIGARH AND ANR.

…Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Raj Kaushik, Advocate
for the petitioner.

Mr. Saurav Verma, Advocate
and Ms. Preeti Grover, Advocate
for respondent No.2.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Mohinder Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 05.09.2011 (Annexure P-16) and Award dated 18.07.2014/22.01.2015 (Annexure P-17) passed by the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh (here-in-after referred to as `the Tribunal'). In the statement of claim, the petitioner stated that he joined respondent No.2-Punjab National Bank (North Zone), Sector 17, Chandigarh (here-in-after called as `respondent-

Management') and his services were terminated by the Management vide order dated 21.12.1999. The petitioner challenged the afore-said termination order on the ground that the enquiry conducted against him was not proper and no witnesses were examined. He further claimed that the appeal preferred by him against his termination order, was also dismissed in an illegal manner. Accordingly, prayer was made by the petitioner for his reinstatement in service.

3. The afore-said claim of the petitioner was controverted by the respondent-Management on the plea that the petitioner was guilty of gross misconduct, for which, a charge sheet was served upon him and a proper enquiry was conducted into the allegations against the petitioner; whereupon, the enquiry report was submitted by the Enquiry Officer and thereafter, a Show Cause Notice was served upon the petitioner and after following due procedure, the services of the petitioner were terminated. Accordingly, prayer was made for dismissal of the claim of the petitioner.

4. It appears that the Tribunal below pronounced upon the fairness of the enquiry proceedings vide order dated 05.09.2011 (Annexure P-16) by holding that the enquiry was according to the principles of natural justice, fair and reasonable. Thereafter, the Tribunal below vide impugned Award dated 18.07.2014 (Annexure P-17) answered the reference against the petitioner-workman.

5. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

6. Learned counsel for the petitioner submits that the Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is submitted that the sole charge against the petitioner was that he had taken

amount from the account holders but the said amount was not deposited in their account. It is submitted that respondent No.2-Management had completely failed to prove the charges levelled against the petitioner as none of the account holders were called in the enquiry to prove the charges against the petitioner; therefore, the enquiry conducted by the respondent-Management was unfair and the enquiry report stands vitiated. It is further submitted that even otherwise, the Enquiry Officer has not followed the principles of natural justice while holding the enquiry. It is contended that since the charges levelled against the petitioner had not been proved; accordingly, the punishment awarded to the petitioner for the alleged misconduct is not only disproportionate but unsustainable in the eyes of law. Therefore, prayer has been made for quashing of impugned order dated 05.09.2011 (Annexure P-16) and Award dated 18.07.2014/22.01.2015 (Annexure P-17) passed by the Tribunal by further directing re-instatement of the petitioner and to grant him other consequential benefits.

7. Per contra, learned counsel appearing for respondent No.2-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed a justified award, keeping in view the peculiar facts and circumstances of the case. It is submitted that the petitioner, while working as a Peon/officiating Clerk, at the Extension Counter, Mata Mansa Devi Complex, under Branch Office Sector 7, Panchkula, had committed various acts of misconduct by misappropriating the amounts of the customers; therefore, he was charge-sheeted, to which, he submitted his reply and since the reply was not found satisfactory, accordingly, the Enquiry Officer was appointed and the enquiry proceedings were initiated against the petitioner, wherein he participated. It is submitted

that the Enquiry Officer, after considering the material/evidence available on the record, submitted his enquiry report (Annexure P-10); wherein Charge Nos.1 to 4 and 7 were proved in *toto* whereas, Charge Nos.5 and 6 were not proved against the petitioner. It is submitted that the enquiry report was submitted by the Enquiry Officer to the respondent-Management and the competent/disciplinary authority issued a Show Cause Notice to the petitioner and thereafter, the Disciplinary Authority, after taking stock of the matter, proceeded to pass dismissal order dated 21.12.1999 (Annexure P-13) against the petitioner. It is submitted that the petitioner filed an appeal against the afore-said dismissal order dated 21.12.1999; however, the same was also dismissed by the Appellate Authority vide its order dated 19.04.2000 (Annexure P-15). It is stated that thereafter, the petitioner raised an industrial dispute, which has now been answered against him vide impugned Award dated 18.07.2014/22.01.2015 (Annexure P-17). It is, therefore, submitted by the learned counsel for the respondent-Management that the charges levelled against the petitioner regarding embezzlement stands duly proved against him and he has been rightly ordered to be dismissed from service.

8. It is contended that once the enquiry conducted against the petitioner has been held to be fair and reasonable, accordingly, the imposition of punishment is within the domain of the Management and no interference is required to be made in the same. Accordingly, prayer for dismissal of the writ petition has been made.

9. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

10. Contours of the scope of interference by High Court in disciplinary proceedings are well settled. In ***Union of India v. P.* Gunasekaran, 2015(1) S.C.T. 5**, Hon'ble Supreme Court held as under:-

> *"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :*
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> *a) the enquiry is held by a competent authority;*
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> *b) the enquiry is held according to the procedure prescribed in that behalf;*
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> *c) there is violation of the principles of natural justice in conducting the proceedings;*
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> *d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
>
> *e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
>
> *g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
>
> *h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

i) the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

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18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court…"

11. Coming to the case in hand, it is borne out from the paper-book that the petitioner was served with a Charge-Sheet dated 07.08.1997;

wherein, the following charges were levelled against him :-

(i) On 27.05.1997, you withdrew a sum of Rs.25,000/- from SF A/c No.40 of Mrs. Sunita fraudulently without getting the payment passed from the authorized official and the customer has denied having taking any payment of Rs.25,000/- on the said date. Thus, you misappropriated the amount of Rs.25,000/- of the customer.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(ii) On 11.06.1997, you received a sum of Rs.44,500/- from Shri Om Prakash for deposit of his account No.48 and issued receipt for the same and also made entry in his passbook but there is no such entry in bank's books thus embezzling the amount of the customer. When account holder raised this issue and made complaint, you refunded the amount of Rs.44,500/- to Shri Om Prakash and thereafter, influenced him to withdrew his complaint.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(iii) On 27.05.1997, you received Rs.3000/- and Rs.2500/- from Sh. Anil Joshi for deposit of SF A/C No.36 and CA No.11 respectively but did not enter in cashier's long book and other books. On 30.05.1997, you altered the date on the pay-in-slips from 27.05.1997 to 30.05.1997 and deposited the amount on 30.05.1997, thus misappropriating the amount of Rs.5500/- for three days.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(iv) On 3.4.1997, Sh. Khubi Lal deposited Rs.1000/- in his SF A/c No.175 and you made entry of Rs.1000/- in his passbook as well as his ledger sheet. However, there is no such entry in cash book, long book etc. Thus, you have misappropriated Rs.1000/- of the customer.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(v) The following debit entry in the passbook of the customer has been made by you :

A/C No.	***Name***	***Date***	***Amount***
SF 40	*Sunita*	*10.06.1997*	*Rs.5000/-*

There is no corresponding debit entry in the ledger sheet, cash book and long book etc. which reflects your malicious and fraudulent intention.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(vi) On 15.5.1997 and 3.6.1997, you received Rs.6000/- and Rs.7000/- respectively from Sh. Mohan Lal for deposit in his SF A/c No.147 and made entries in the passbook. Neither receipt was issued to the customers nor cash thus misappropriating customer's money.

Your aforesaid act is major misconduct in terms of para 19.5(j) of the Bipartite Settlement as amended.

(vii) On 1.10.1996, while officiating as assistant cashier at BO: Sector 7: Panchkula, you received a sum of Rs.15000/- from Sh. Ajay Bansal for deposit in SF A/c No.10816 but did not enter the cash in the cashier long book and deposited the amount on 3.10.1996 thus misappropriating the amount of Rs.15000/- for two days.

12. It appears that the petitioner submitted his reply to the aforesaid charge sheet and since the same was not found to be satisfactory, the respondent-Management appointed an Enquiry Officer to conduct the enquiry into the charges levelled against the petitioner. It has come on record that the petitioner had participated in the said enquiry proceedings and the Enquiry Officer submitted his report dated 09.09.1999 (Annexure P-10); wherein, Charges No.1 to 4 and 7 were proved against the petitioner.

13. On the basis of the afore-said Enquiry Report dated 09.09.1999 (Annexure P-10), the Disciplinary Authority issued a Show Cause Notice

dated 08.12.1999 (Annexure P-12). Thereafter, the Disciplinary Authority passed an order dated 21.12.1999 (Annexure P-13); whereby, the petitioner was dismissed from service. An appeal filed by the petitioner against the dismissal order (Annexure P-13) was also dismissed by the Appellate Authority vide order dated 19.04.2000 (Annexure P-15).

14. Evidently, thereafter, the petitioner raised an industrial dispute, which was referred for adjudication to the Tribunal below. The Tribunal below, after considering the evidence/material available on the record, passed an order dated 05.09.2011 (Annexure P-16) holding that the enquiry conducted against the petitioner was according to the principles of natural justice, fair and reasonable. Further, the Tribunal below, vide impugned Award dated 18.07.2014/22.01.2015 (Annexure P-17) has answered the reference against the petitioner by holding that the punishment awarded to him cannot be held to be disproportionate to his misconduct.

15. A perusal of the enquiry report would show that the following findings have been returned in respect of Charge Nos.1, 2, 3, 4 and 7, which have been held to be proved against the petitioner. The same reads as under :-

> *"**Charge No.1***
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> *MW2 is Sr. Inspector in the branch made the enquiry into the said charge. MW2 verified in his deposition vide Q. No.8 having met Smt. Sunita Devi who stated personally at she has not withdrawn the amount of Rs.25,000/-. MW2 confirmed in his deposition in Q. No.9 to 15 that Ex. M4 is not passed by any officer. In Ex. M5 the entry has been made by CSE himself signature on M-4 at the back differs.*
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> *MW3 who is a Manager in the Branch Sector 7 Panchkula in his deposition confirm having met Smt. Sunita*

Devi and verified her pass book where there was no debit entry of Rs.25,000/-. MW3 in Q. No.8, 9 verified to handwriting of CSE on Ex.M5. In cross examination at Q. No.12 witnesses certified that initial on entry can not be identified.

MW4 was the incharge of Ext. counter at that time when entry of Rs.25,000/- was debited in the account of Smt. Sunita Devi. In his deposition, MW4 testified from Q. No.12 to 19 that M4 is not passed by him neither it was presented to him. It bears the signatures of CSE. Further in M5 the entry is in the handwriting of CSE and it is not initialed by him. In Q.N. 19 to 21 MW4 testified having met Smt. Sunita Devi who wanted enquiry in the matter as to who has withdrawn Rs.25,000/- from her A/C.

CSE could not produce his witness that is Smt. Sunita Devi despite sufficient opportunities being provided to him further summons issued to the witness by EO through registered post were also received back with the remarks "letter is being returned back as the person is not residing there." Please refer over leaf of page 45 enquiry register 2. Hence CSE has failed to prove his version.

Hence keeping in view the deposition of MW 2, 3, 4, it is proved that payment is made by CSE without proper authorization further the evidence prove that payment is not taken by the customer hence the CSE has misappropriated the amount. Hence the charge stand proved.

Charge No.2

Ex. M-13 is the complaint of Sh. Om Parkash who stated that on 11.6.97 he deposited Rs.44,500/- in his account No.45 (SF).

CSE who was working as cashier received the cash and made entry in the pass book M14. But the said entry was not reflected in the bank ledgers.

MW2 who is Sr. Inspector in the branch confirmed in his testimony, the contents of Ex. M13 in Q. No.17 and credited in Q. No.18 to 29 from Ex.M14, M15, M16 that entry was made in the pass book in the handwriting of CSE and the said entry is not appearing in the ledger sheet M15. In M-16 he identified the signatures of Sh. Om Parkash, who has stated that the CSE has refunded him the money and is withdrawing the complaint. "M-23" is the Ex. vide which CSE has confirmed the charge and his confession.

Sh. Om Parkash who appeared as witness of defence stated categorically that he had no knowledge of the contents of the affidavit D-13. He had only signed it. The above statement appeared in cross examination (Ref. Page No.44 – Enquiry register No.2). Hence the document and evidence of Sh. Om Parkash has lost its value.

Keeping in view the above facts the explanation given by CSE is not acceptable and the charge stand proved in toto.

Charge No.3

Bank has received the complaint from public, MW2 who is Sr. Inspector made the investigation and submitted his report Ex.M-19.

Documentary evidence in the shape of M6, M7, M8, M9 duly supported by examination-in-chief of MW2 vide Q. No.32 to 35 and examination in chief of MW4 who incharge on the said date of the extension counter, from Q. No.32 to 46 confirms that CSE had received the cash on 27.5.97 in SF A/C and C/A No.11 and in lieu of having received the cash issued counter foil marked as Ex. M6 and M7 duly signed by the CSE. Both the witnesses confirmed the handwriting of CSE and alteration made by CSE on pay in slip of M6 & M7 from 27.5.98 to 30.5.98.

Defence produced Sh. Anil Joshi as their witness. But Sh. Joshi did not permit PO to complete his cross examination and left the enquiry in between despite several *request by EO. (Please ref. proceedings on Page 38 – Enquiry register No.2).*

Keeping in view the incomplete cross examination and PO being deprived of his right to cross examine the witness to find out the truth, the evidence given by the said witness is not being given any weightage.

CSE stated in his defence that servant was deputed to remit cash on 27.5.98 but amount was never deposited. Then how it is that counter foil duly singed by CSE was issued on 27.5.98. All the evidences stated above only prove the charge.

Charge No.4

A customer Sh. Khubi Lal had lodged a complaint (Ex. M-27) that he had given Rs.1000/- to Sh. Mohinder Kumar, the CSE on 3.4.97 for deposit in his A/c No.175 but the same was not deposited in his A/c. MW2 who is Sr. Inspector, made the enquiry and submitted his report as Ex. M-19.

MW2 who made the investigation, in his deposition in Q. No.34, 36 to 46 has testified having met the complainant 3-4 times who made the complaint vide Ex.M-27. MW2 verified from Ex. M-9, M-10, M-11 (Ledger sheet and pass book respectively). M-12 cashier long book that no cash was deposited and CSE made the entry in ledger sheet and in pass book in his own handwriting.

MW-4 who was incharge of Ex. Counter on that time in his deposition also verified from Q. No.49 to 57 from Ex.M-10, M-11, M-12, M-27 that no cash of Rs.1000/- was received in A/c No.175 and in ledger sheet M-10 & in pass book M-11. Entry has been made by CSE in his own handwriting.

CSE statement that he made the entry on asking by the I/c is not acceptable in the absence of any statement. CSE admitted having made the entry on 4.4.97 and he was on leave on 3.4.97.

On the basis of documents and evidences, deposition of witnesses, the charge stand proved in total.

<u>Charge Nos.5 & 6</u>

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<u>Charge No.7</u>

Customer Mr. Ajay Bansal lodged a complaint vide Ex.M-20 alleging that he deposited Rs.15000/- on 1.10.96 which was received by CSE but the same was deposited by CSE on 3.10.96 instead of 1.10.96.

MW1 in his deposition in Q. No.2 to 8 stated the procedure for receiving the cash and accounting of the same in bank books on the same date.

MW1 stated in Q. No.20 to 23 and established that he was asked by the authorities to investigate the complaint Ex.M-20 MW1 submitted a copy of report marked as M-26 and confirmed the contents.

MW in Q. No.12 to 21 verified from the contents of Ex.M-21, M-25, M-22, M-20 and testified of Rs.15,000/- was received by CSE on 1.10.96 and the same was not accounted for on 1.10.96 and CSE unauthorisedly kept the amount with himself and deposited the same on 3.10.96.

MW1 also testified having met the complaint and identified the signatures of complainant in Ex. M-20.

MW2 who is Sr. Inspector in the branch also confirmed in his deposition Q. No.3, 4, 7 that he met the complainant Sh. Ajay Bansal and confirmed having seen the receipt vide which the cash of Rs.15,000/- was deposited on 1.10.96. MW2 also recorded the incident in Item No.104 of IR dt. 31.12.96, a copy of which was handed over to DR also in the proceeding."

16. Once, the charges levelled against the petitioner have been proved in the enquiry report and the enquiry has been held to be fair and reasonable; therefore, keeping in view the well settled proposition of law, there is no scope for any re-appreciation of evidence led before the Enquiry

Officer; wherein the findings on above-referred Charges No.1 to 4 and 7 stand duly proved and the Disciplinary Authority, having accepted the same, had passed the dismissal order against the petitioner.

17. In view of the afore-mentioned circumstances and considering the well settled position in law that once the charge of misappropriation stands proved against the delinquent employee, then the only punishment to be awarded to such an employee is dismissal from service. In this regard, reference can be made to the judgment of Hon'ble the Apex Court in ***Municipal Committee, Bahadurgarh v. Krishnan Bihari & Ors. AIR 1996 Supreme Court 1249***; wherein, it has been held as under :-

> *"In a case of such nature – indeed, in cases involving corruption – there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."*

18. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one.

This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issue of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* ***Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964***

Supreme Court 477*; *Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61*; *Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976*; *R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507*and *Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.

19. Keeping in view the above said principles and also considering the totality of circumstances, this Court is of the opinion that there is no scope for interference in the impugned order (Annexure P-16) and also the impugned Award dated 18.07.2014/22.01.2015 (Annexure P-17) passed by the learned Tribunal below and the present writ petition is accordingly dismissed.

20. No other point has been urged.

21. All pending application/s, if any, shall also stand closed.

July 07, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No