



W.A.Nos.3457 & 2879 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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<i>Reserved on</i>	02.09.2024
<i>Pronounced on</i>	15.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.3457 & 2879 of 2023
and C.M.P.No.24803 of 2023

WA.No.3457/2023

A.Savarinathan

...Appellant

Vs.

1.The Presiding Officer,
 Central Government Industrial
 Tribunal-cum-Labour Court,
 I Floor, 'B' wing, 26, Haddows Road,
 Shastri Bhavan, Chennai-600 006.

2.The Regional Manager,
 (Disciplinary Authority),
 State Bank of India, Region-IV,
 Regional Business Office, Puducherry.

3.The Deputy General Manager (B&O)
 (Appellate Authority)
 State Bank of India, Chennai Zone-II,
 Zonal Office, Chennai-600 001.

...Respondents



W.A.Nos.3457 & 2879 of 2023

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 19.07.2023 in WP.No.10281 of 2016, insofar as declining the relief of reinstatement with full back wages, continuity of service and all other attendant benefits as illegal, arbitrary, contrary to law and consequently, direct the respondents to reinstate the appellant with full back wages, continuity of service and all other attendant benefits.

For Appellant : Mr.S.Balan Haridas
For R1 : Court
For R2 & R3 : Mr.S.Ravindran
Senior Counsel
for Mr.S.Bazeerahamed

WA.No.2879/2023

1.State Bank of India
Rep. by its Deputy General Manager (B&O),
Chennai Zone-II,
Zonal Office, Chennai-600 001.

2.State Bank of India
Rep. by its Regional Manager,
(Disciplinary Authority)
State Bank of India, Region-IV,
Regional Business Centre, Puducherry-605 001.

...Appellants

Vs.

1.The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
I Floor, 'B' wing, 26, Haddows Road,
Shastri Bhavan, Chennai-600 006.



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2.S.Savarinathan

...Respondents

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Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 19.07.2023 in WP.No.19552 of 2016.

For Appellants : Mr.S.Bazeerahamed

For Respondents : R1-Court

Mr.S.Balan Haridas for R2

COMMON JUDGMENT

When the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai (Tribunal) made in I.D.No.95 of 2013 dated 18.11.2015, setting aside the punishment of dismissal dated 27.09.2012 and modifying it into one of compulsory retirement, was challenged by both the employee and the State Bank of India (Bank) before this Court in W.P.Nos.10281 of 2016 and 19552 of 2016 respectively, a learned Single Judge of this Court had confirmed the award, through a common order dated 19.07.2023, which order is assailed in these Intra Court Appeals.

2.1. The brief facts before the learned Single Judge in the Writ Petitions are as follows:-

2.2. Through a charge memo dated 24.06.2011, the Bank had levelled



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13 charges against the employee, terming them to be gross misconducts.

2.3. Not being satisfied with the explanation rendered by the employee to the levelled charges, he was subjected to departmental enquiry, in which, 12 of the charges were held as 'proved' and the 4th charge as 'partially proved'.

2.4. On the basis of these proven charges, the Disciplinary Authority had imposed a punishment of dismissal on 27.09.2012.

2.5. The appeal against the said punishment before the Appellate Authority of the Bank was rejected on 24.01.2013.

3. The dispute thereafter became a subject matter of reference made under Section 10(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the point of reference made by the Central Government to the Tribunal for adjudication is as follows:-

“Whether the action of the Management of the State Bank of India in dismissing Shri.A.Savarinathan, Ex-Clerk of Panruti Branch is legal and justified? To what relief the concerned workman is entitled to?” (sic)

4. Before the Tribunal, the employee had questioned the fairness of the enquiry, which was countered by the Bank. Through a preliminary award



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dated 02.03.2015, the domestic enquiry was held to have been fair and proper. The preliminary award was not challenged by the employee. Thereafter, on the strength of the evidences before it, the Tribunal had passed an award in I.D.No.95 of 2013 dated 18.11.2015, by which it had held that out of the 13 charges, except Charge Nos.1, 2, 4 and 8, the remaining 9 charges were not substantially proved during the enquiry and accordingly had modified the punishment of dismissal into one of compulsory retirement. Both the employee and the Bank had unsuccessfully challenged the award before the Writ Court, which dismissal orders are under challenge in these Writ Appeals.

5. The learned counsel for the employee predominantly questioned the award of the Tribunal on the ground that the domestic enquiry was not conducted in a fair and proper manner, since some of the material documents were not furnished to him, which is in violation of the principles of natural justice.

6. On the other hand, the learned counsel appearing on behalf of the Bank would submit that the entire charges against the employee relate to



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misappropriation of funds, which is a gross misconduct. According to him, even though there are sufficient materials before the Tribunal to substantiate all the charges, the Tribunal had erred in holding that 9 out of the 13 charges were not proved during the course of enquiry. With such submissions, he questioned the modification of the punishment imposed by the Bank.

7. We have given our anxious consideration to the submissions made by the respective counsels.

8. Through the preliminary award of the Tribunal dated 02.03.2015, the domestic enquiry conducted by the Bank was held to be fair and proper. Though the preliminary award was not challenged by the workman, he would be entitled to challenge the same together with the final order, in line with several of the decisions rendered by the Constitutional Courts, including the case in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe* reported in (1975) 2 SCC 661.

9. The main submission of the learned counsel for the employee is that several vital documents touching upon the charges have not been furnished



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to him, in spite of his request, which is unfair and unreasonable, apart from violating the principles of natural justice. The Tribunal, on the strength of the enquiry proceedings, had found that sufficient opportunity was given to the employee to defend the case and the employee's representatives have elaborately cross examined all the witnesses. The Tribunal had also taken note of the fact that, from the materials produced before the Tribunal, it was sufficient to prove or disprove the charges and therefore, when the employee was represented at each stage of the proceedings effectively and was defending his case throughout, it cannot be said that the enquiry was not done in a fair and proper manner. It is in this background that the Tribunal had relied on the materials on record and concluded that, out of the 13 charges, 9 charges were not proved.

10. The learned counsel representing the Bank had submitted that the findings of the Tribunal holding 9 charges as not proved, as well as the learned Single Judge, are based on no evidence. In support of such a contention, he placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Central Industrial Security Force & others Vs. Abrar Ali* reported in (2017) 4 SCC 507; *General Manager Vs. Giridhari Sahu &*



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others reported in (2019) 10 SCC 695; and *Yakoob Vs. K.S.Radhakrishnan* reported in AIR 1964 SC 477.

11. It is a well settled proposition that the Courts will not act as an Appellate Court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. In all these decisions, it has been held that when the enquiry has been fairly and properly held and the findings are based on evidence, the Courts will not interfere with such findings of fact recorded in departmental enquiries, except where there is perversity. In the light of these settled propositions, we undertook the ordeal of analysing the discussions made in the final award. As referred to hereinbefore, the Tribunal had held that the Charge Nos.1, 2, 4 and 8 alone stands proved, among the 13 levelled charges.

12. Insofar as Charge Nos.5, 6, 7, 9 ,10, 11 and 12 are concerned, which charges have been held as not proved by the Tribunal, they all relate to allegations as if the employee had debited certain amounts from the Savings Bank Account/Cash Credit Account/Gold Loan Account/CC Allotment Account from individual customers and unauthorizedly transferred the same



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either to the employee's joint account or the employee's wife's Savings Bank Account. While dealing with these charges, the Tribunal had in detail, gone into the evidences put forth before the Enquiry Officer and had found that in all these cases, there were no individual complaints from the respective customers, from whose account the money was alleged to have been unauthorizedly transferred and that, these individual customers were not examined during the course of enquiry. The allegation in the charges was that while such transfers were effected, the vouchers relating to the transaction were not prepared. To such an allegation, the Tribunal had placed reliance on the VVR Checking Register that was marked by the bank, where there is no reference that the vouchers for the said period were missing. The Tribunal also found that the employee did not deny the fact that certain amounts were transferred to either his account or his wife's account, but had remarked upon the proceedings that the Bank had failed to establish that such transfers of funds from individual customers to the employee/his wife's account were unauthorized.

13. Insofar as Charge Nos.3 and 13 are concerned, it is alleged that the employee had opened a demand loan account in the name of one Gopal,



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without his knowledge, and took the loan amount for himself and had further foreclosed his fixed deposit and debited a portion of this misappropriated sum into the Savings Bank Account of Gopal for deriving pecuniary benefits. The Tribunal, after elaborately dealing with the evidences, had come to the conclusion that the Enquiry Officer did not discuss any of the materials that were placed before him or given any reasons for arriving at a finding that these two charges were proved. The Tribunal also took note of the fact that a statement given by Gopal, which was marked as a document in the enquiry, cannot be relied upon, since the author of the statement was not examined, thereby depriving the delinquent to cross examine as to the veracity of the statement, for which purpose, reliance was placed on the decision in ***B.Padmaiah Vs. Union of India and Others*** reported in ***2007 Writ L.R. 7***. Both these charges relate to the same customer whose funds are alleged to have been mishandled by the employee and therefore, the Tribunal had jointly dealt with the evidences available on record, insofar as it touches upon these two charges.

14. In our considered view, the Tribunal had rightly exercised its powers under Section 11A of the Act and had come to the conclusion that the



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Enquiry Officer did not rely upon any valid evidence for holding these 9 charges as proved. Thus, the findings of the Enquiry Officer for the aforesaid 9 charges, would suffer from perversity and thus, the Tribunal was justified in disregarding these 9 charges.

15. Insofar as Charge Nos.1 and 2 are concerned, it is alleged that the employee had altered his transfer loan (overdraft) allotment thrice, by misusing his capability level-7 and withdrew amounts over and above the sanctioned overdraft limit of Rs.2,00,000/-. The fact that the employee had altered the sanctioned limit of the transfer loan (overdraft) has been admitted, since the employee himself had corrected the limit later, on coming to know about the alleged erroneous alteration. This finding was rendered by the Tribunal on the basis of the personal loan sanction letter, which was marked as a document in the enquiry evidencing the sanctioned limit. The Tribunal had also considered the employee's letter to the Branch Manager, seeking to condone the lapse on his part, relating to his erroneous alteration of sanctioned limit and thus had come to the conclusion that Charge Nos.1 and 2 are proved. Thus, there is no perversity in these findings.



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16. Insofar as Charge No.4 is concerned, the Tribunal had come to the conclusion that the demand loan account was opened in the name of an individual customer, without his knowledge and withdrew the same for his personal benefits, based on the evidence of the individual customer, as well as the employee's witness, who was a Bank staff and had handled the repayment of the amount given to him by the employee himself. The other statement of the employee's witness, attempting to absolve him from the charges, were disbelieved and by holding that there were sufficient materials to establish that the employee had opened a loan account in the name of a customer, without his knowledge and had withdrawn the amount, the Tribunal had held Charge No.4 as proved.

17. The other charge, which was held as proved by the Tribunal, is Charge No.8, which relates to temporary misappropriation of a sum of Rs.2,000/- received from one customer on 31.08.2009 and belatedly remitted on 30.12.2009. The Tribunal placed reliance on Ex.M.75, whereby the amount remitted by the employee was revealed and on that basis, had held the charge as proved. Since such a finding was rendered on the basis of the materials before the Tribunal, it is incorrect on the part of the employee that



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the findings were not based on evidence.

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18. In all the aforesaid four charges, the Tribunal had rightly relied on the evidences before the Enquiry Officer and had come to the conclusion that the charges have been well established against the employee. We do not find any infirmity or illegality in such findings and thus, it cannot be said that these findings are perverse.

19. The learned Single Judge had also found that there are overwhelming materials, which unerringly point out to the delinquency of the employee, to the proven charges. The Court also held that, since 9 out of the 13 charges were disproved and on consideration of the length of service of the workman, the Tribunal had rightly modified the punishment. We also find that the learned Single Judge had not ventured to exercise the process of re-appreciating the evidence. As a matter of fact, even the Tribunal had not undertaken such a process. It is in this background, the Writ Petitions preferred by both the Bank, as well as the employee, were rejected. We do not find any perversity or any other illegality in the said order.



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20. In the result, we find no merits in these Writ Appeals and hence, both the appeals stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J.] [C.K., J.]
15.11.2024

Index: Yes
Neutral Citation: Yes
Speaking order

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To

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Central Government Industrial
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M.S. RAMESH, J.
and
C.KUMARAPPAN, J.

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Pre-delivery common judgment made in
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