



2024:DHC:3541



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 6th February, 2024**

Pronounced on: 3rd May, 2024

+ **W.P.(C) 1394/2012 & CM APPL. 3025/2012**

ACHLA KAPOOR

..... Petitioner

Through: **Mr.G.S Chaturvedi and Mr.Ashok
K.Choudhary, Advocates**

versus

THE DISCIPLINARY AUTHORITY ZONAL MANAGER

PUNJAB AND SIND BANK AND ANR

..... Respondents

Through: **Mr.Kittu Bajaj, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J

FACTUAL MATRIX

1. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a. The petitioner was employed as a steno-typist in the respondent bank since December, 1976.
- b. In 1999, the petitioner took multiple loans from Credit and Thrift Societies to address her domestic challenges and eventually she failed to repay the loans as per the agreed



schedule, therefore, the credit societies contacted the respondent management seeking repayment of the instalments.

- c. Pursuant to which, the petitioner was issued show cause notice dated 25th June, 2001 pertaining to the outstanding loans from Credit Societies, and the petitioner filed a reply to the same. Consequently, the respondent issued a warning to the petitioner in accordance with the bipartite settlement, advising against excessive borrowing vide order dated 27th September, 2001.
- d. Subsequently, the petitioner was placed under suspension vide order dated 20th May, 2003 in respect of the aforesaid allegations of excessive borrowings.
- e. The petitioner received a show cause notice on 12th August, 2003, wherein it was accused that she obtained a loan of Rs. 1 lakh from Bank of Maharashtra, she filed reply to the same on 22nd August 2003.
- f. The petitioner did not to adhere to the repayment schedule for the loans thereby, on 12th May, 2004, the respondent no.1 issued a charge sheet alleging forgery in certain loan documents.
- g. Pursuant to which, the inquiry in the show cause notice commenced on 15th December 2004, whereby, the petitioner admitted to the factum of taking aforesaid loan vide letter dated 24th December, 2004.
- h. On 5th January, 2005, the petitioner submitted a written brief stating that she admits availing the loan but denied fabrication of



the documents as alleged in the chargesheet.

- i. The inquiry officer in its inquiry report dated 10th January 2005, held that based on aforesaid letters of the petitioner, the charges against her stood proved.
- j. Pursuant to which, the Disciplinary Authority vide its order dated 2nd June, 2005, imposed the punishment of 'compulsory retirement' along with superannuation benefits to the petitioner.
- k. The petitioner filed appeal to respondent No.2/Appellate Authority on 27th June, 2005, however, the same was dismissed vide order dated 9th November, 2005.
- l. The matter *vide* reference dated 7th May, 2008, the Appropriate Government referred the industrial dispute for adjudication on the following terms:

“Whether the action of the management of Punjab and Sind Bank in imposing the penalty of 'compulsory retirement with superannuation benefits and her period of suspension would not be treated as a period spent on duty and she would be entitled to only the subsistence allowance already drawn by her vide order dated 2.6.2005 on Smt. Achala Kapoor is legal and justified. If not to what relief the concerned workman is entitled?”

- m. Pursuant to completion of the proceedings, vide order dated 22nd February, 2011, the learned Tribunal upheld the quantum of punishment imposed on the workman and concluded that the order dated 2nd June, 2006, was legally justified and warranted no interference.



n. Aggrieved by the impugned award, the petitioner has filed the instant petition.

2. Learned counsel appearing on behalf of the petitioner submitted that the learned Tribunal failed to recognize that the punishment order dated 2nd June, 2005 penalized the petitioner for actions for which she had already been penalized by the same authority vide the order dated 27th September, 2001, therefore, leading to double punishment for the same alleged offence/misconduct.

3. It is submitted that the learned Tribunal erred in stating that the petitioner did not place on record the show cause notices dated 25th June, 2001 and 12th May, 2004 since, both the documents were duly exhibited with the evidence affidavit of the petitioner.

4. It is submitted that charging the petitioner for the same offenses at different times under varied clauses of the Bipartite- Settlement is unjustified and against the settled position of law.

5. It is submitted that the charges made under the show cause notice dated 12th May, 2004, are absolutely vague and lacks in material particulars. It is further submitted that since the act of the petitioner is a minor misconduct, Clause 5 (j) and Clause (m) of the Bipartite- Settlement are not applicable in the case of the petitioner.

6. It is further submitted that the appeal of the petitioner was wrongly adjudicated upon by the respondent no. 2, since the officer entertaining the appeal was junior to the Enquiry officer.



7. It is submitted that the petitioner was denied the assistance of a defense assistant by the inquiry officer and same is a gross violation of the principle of natural justice.

8. It is contended that the inquiry report dated 10th January, 2005 is flawed because it solely relies on the petitioner's admitting charges levied on it and did not take into consideration the petitioner's submission that she had taken loans under compelling circumstances and never forged any document and same was disregarded by the inquiry officer thereby, the inquiry officer wrongly concluded that the charges were proved solely on the basis of the petitioner's admission.

9. In view of the aforesaid submission, the learned counsel for the petitioner submitted that the instant petition may be allowed and the reliefs as sought by the petitioner may be granted.

10. *Per Contra*, learned counsel appearing on behalf of respondent/management vehemently opposed the instant petition submitting to the effect that there is no legal infirmity or perversity in the impugned award which merits interference of this Court.

11. It is submitted that despite being previously warned, the petitioner committed severe instances of insubordination, and had been blatantly disregarding the directives of the respondent no.1.

12. It is contended that the petitioner did not contest the validity of the enquiry proceedings before the learned Tribunal thereby, no question regarding the validity of the inquiry was addressed by the Tribunal. Moreover, the actions taken against the petitioner pursuant to the



disciplinary inquiry were based on her voluntary and unconditional admission of the charges.

13. It is submitted that the order dated 2nd June 2005 was filed after duly appreciating the facts, her representation as well as the entire enquiry record especially taking the petitioner's admission of taking loans into consideration.

14. It is further submitted that the punishment imposed upon the petitioner is commensurate with the gravity of charges levied upon her, thereby, the same is not amenable to Section 11A of the Industrial Disputes Act, 1947.

15. It is contended that under writ jurisdiction, writ Courts have very limited jurisdiction and it does not sit in appeal over the orders passed by the Competent Authority.

16. In view of the aforesaid submissions, learned counsel appearing on behalf of the respondents submitted that the instant writ petition being devoid of any merit is liable to be dismissed by this Court.

17. The matter was heard at length with arguments advanced by both the parties. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.

18. It is the case of the petitioner that the learned Tribunal failed to acknowledge that the punishment imposed vide show- cause notice dated 2nd June, 2005, is similar to the penalties imposed vide order dated 27th September, 2001. Therefore, the respondent no.1 has wrongly charged the



petitioner for the same offenses under different clauses of the bipartite settlement at different times, and the same is unjustified.

19. It is further averred that the Tribunal erred in claiming that the petitioner didn't provide documents to substantiate the similarity of charges in two notices.

20. In rival submissions, the respondent submitted that the impugned award does not suffer from any illegality as the petitioner's actions including insubordination despite prior warnings and the creation of false documents demonstrated a complete disregard of the respondent no. 1's directives and professional standards. It is further averred that since the petitioner did not challenge the validity of the departmental inquiry before the Tribunal, no questions regarding its validity were addressed, and the disciplinary actions were based on her voluntary admission of charges.

21. In light of the aforesaid submissions, the short question which falls for adjudication before this court is whether the impugned award merits interference of this court under Article 226 or not.

22. For the purpose of adjudication of the instant petition, this Court deems it imperative to peruse the impugned award which is reproduced herein below:

“22. The workman was charge sheeted in this case vide charge sheet dated 12.5.2004 for the charges enunciated therein. A departmental enquiry was instituted against her for probing into the veracity of the said charges. The workman in her reply dated 24.12.2004 to the said charges, of her own volition and without any coercion admitted the same. She now contends that she had admitted the charges except the charges of



forgery levelled against her in the said charge sheet. However, this plea of hers is not borne out from the record as she has nowhere stated in the reply that she did not admit the charges of forgery against her.

23. It is also not in dispute in this case that before the charge sheet dated 12.5.04 was issued to the workman she was issued a show cause notice dated 25.6.2001 and she candidly and voluntarily accepted the charges mentioned in the said show cause notice as well and the workman vide order dated 26.9.2001 was imposed the punishment of warning by the management and she was further warned not to incur debts from the market without prior permission from the competent authority. The said penalty has also attained finality and it is not the subject matter of this reference.

24. It is further not in dispute that despite the warning in the year 2001 the workman took loan from Bank of Maharashtra without obtaining the permission from the management bank and according to the management this clearly shows her disregard to the specific mandate of the management bank on her. In the charge sheet dated 12.5.2004 the workman was also charged that she had represented herself as officer Grade I at the Zonal Office while taking a loan of Rs.95,000/- from Standard and Chartered Bank, Indian Express Building, ITO, New Delhi. The workman was admittedly only a steno-typist and not a Grade I officer of the management bank and thus she clearly misrepresented to the Standard Chartered Bank for obtaining the loan of Rs.95,000/-. She never disputed that she did not represent herself as Grade I officer of the management bank while taking the loan from Standard & Chartered Bank. It is also mentioned in the charge sheet that while availing the loan of Rs. 1,00,000/- from Bank of Maharashtra, Asif Ali Road, New Delhi, she submitted a No Objection Certificate purported to have been signed by the Manager, Staff Section of Zonal Office, New Delhi stating that the management bank had no objection if the workman could raise loan from them,



while in fact no such no such certificate was issued by the Zonal Office, New Delhi. Clearly, grave and false representations were made by the workman while taking the said loans from those bank even after she was administered the warning vide order dated 26.9.2001. In fact, the departmental enquiry has not been challenged in this case and therefore, sufficiency of evidence need not be gone into by this tribunal.

25. The workman has submitted in this case that she has been charged twice for the same charges i.e. once by way of show cause notice dated 25.6.2001 and the second time by way of the present charge sheet dated 12.5.2004 and the charges in both these documents are similar. It may be noted here that the workman has not brought on record both the document for ascertaining her claim that the charges in the two documents are the same. The management on the other hand has submitted that the charges in the show cause notice dated 25.6.2001 and in the charge sheet dated 12.5.2004 are entirely different. According to them the charges in the show cause notice dated 25.6.2001 were for incurring debts to an extent considered by the management as excessive which is a minor misconduct while the charges in the charge sheet dated 12.5.2004 are for acts which are for gross misconduct as per clause 9(5)(j) and (m) of the Bipartite Settlement. In the given fact situation, it is difficult to accept the charge of the workman that she has been charged twice on the same allegations.

26. The workman has also submitted that the disciplinary authority in this case is the General Manager while the Appellate Authority is DGM who is subordinate in rank to the disciplinary authority and therefore, she has not been properly dealt with in this case. The management on the other hand has challenged the same and has submitted that the Chief Manager is the designated disciplinary authority of the workman and the order of punishment in the present case has been passed by



the Zonal Manager who is the authority higher than the Chief Manager. The designated appellate authority on the order of the Zonal Manager as disciplinary authority is Deputy General Manager (personal) and the appeal in the present case has been decided by the designated appellate authority and there is thus no irregularity on this issue. A circular to that effect has also been placed on record from the side of the management. Here again, the plea of the workman is devoid of any force.

27. Another grievance of the workman in this case is that her representation against the proposed punishment of compulsory retirement has been thrown in the dustbin by the disciplinary authority as it does not find any mention in the order dated 2.6.2005. Rebutting this charge the management bank has submitted that vide letter dated 23.5.05 the workman sought extension of time to file reply to the show cause proposing punishment. Vide letter dated 24.5.2005 she was given further three days time to file the reply. No such reply was received by the management bank within the stipulated period and in fact the reply to the show cause was received by the disciplinary authority only on 4.5.2005 by speed post as is evident from the postal receipt Ex.M.3 and so her submission which was not received within the stipulated time could not be taken into account. However, her past record was taken into consideration while passing the order of compulsory retirement with all retirement benefits appended thereto.

The workman Smt. Achala Kapoor WW1 in cross-examination has stated that she does not know if the management bank had sent her letter dated 24.5.2004 by speed post or not but she denied having received the said letter. She then added that the said letter was delivered to her by the DGM on 30.5.2005 personally at 1.30 PM. There is absolutely no record to prove the assertion of the workman Smt. Achala Kapoor that the DGM had personally handed over the letter dated 24.5.2005 to



her at 1.30 PM. She was also given the suggestion that the DGM did not personally give any such letter to her. If according to the workman herself she had received the letter dated 24.5.2005 on 30.5.2005 she could have given her submissions to the appellate authority before the order was actually passed on 2.6.2005. There is nothing to show that workman Smt. Achala Kapoor was even in any way prejudiced that her submissions on the proposed punishment were not considered by the appellate authority. The conduct of the workman Smt. Achala Kapoor was such that even harsher punishment could have been inflicted upon her by the management but her past record was considered by the management and she was given the punishment of compulsory retirement with all the retirement benefits appended thereto and such a punishment in the facts and circumstances of this case cannot be said to be shockingly disproportionate. The employees of the Nationalised Banks are expected to maintain higher standard of morale and integrity. Even otherwise, this tribunal cannot sit in appeal over the orders of the competent authority. In the circumstances of the present case it cannot be said to be a fit case for interference in the quantum of punishment inflicted upon the workman. No fault can be found even with the other part of the order passed by the management on 2.6.2005 regarding the period of suspension and allowing only the subsistence allowance to the workman already drawn by her. The order dated 2.6.2005 mentioned in the reference is clearly legal and justified and no fault can be found with the said order. The workman is not entitled to any relief in this case. The award is passed and reference answered off accordingly.”

23. Upon perusal of the same, it is made out that the dispute in the impugned award pertains to a charge sheet framed against the petitioner, leading to initiation of enquiry proceedings wherein the petitioner herself



admitted her acts without any coercion. The petitioner contended before the learned Tribunal that she admitted the charges levied on her as per the chargesheet except the charges of forgery of documents. The learned Tribunal observed that as per the record, the petitioner has nowhere in her reply to the chargesheet admitted the charges of forgery levied against her. It is contended by the petitioner workmen that she has been charged twice on the same charges.

24. The respondent contended that as per the show cause notice dated 25th June, 2001, the charges pertained to incurring debts which were considered as excessive, the same is a minor misconduct and the charges levied as per charge sheet dated 12th May 2004 were regarding the gross misconduct and in violation of clause 9(5)(j) and (m) of the Bipartite Settlement.

25. In this regard, the learned Tribunal held that the petitioner had not produced document on record on the basis of which she is contending the same. In view of the submissions made by the respondent as well as the fact that the requisite document has not been produced on record, it is difficult to accept the contentions of the petitioner.

26. It is further contended by the petitioner that in the instant dispute, the disciplinary authority is the General Manager while the respondent no. 2 is DGM who is subordinate in rank to the disciplinary authority, therefore, the appeal has not been properly dealt with by the respondents. In rival submissions, the respondent submitted that the Chief Manager is the designated disciplinary authority and the order of punishment has been passed by the Zonal Manager who is the authority higher than the Chief



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Manager, therefore, there is no irregularity. Accordingly, the learned Tribunal held that the petitioner's aforesaid contention is devoid of any merit.

27. The petitioner further averred that her representation against the proposed punishment of compulsory retirement has not been taken into consideration as the same has not been in the order dated 2nd June, 2005.

28. In this regard, the respondent submitted that the respondent no.1 stated that no such reply was received by the respondent no.1 in stipulated period and the same was received on 4th June, 2005 after expiry of the stipulated time, hence, her submission which was not received in due time could not be taken into account.

29. In this regard, the Tribunal noted that the petitioner in her cross-examination denied receiving the letter dated 24th May, 2004 and further stated that the said letter was delivered to her by DGM on 30th May, 2004 therefore, she had the opportunity to file reply to the aforesaid letter as the appellate authority had passed the order on 2nd June 2005.

30. It was held by the learned Tribunal that there is nothing on record to prove the fact that the proceedings of the respondent no.2 were conducted in a prejudiced manner. It was further held that since the petitioner disregarded the warnings and misrepresentations as a bank officer, her conduct amounted to severe insubordination. The learned Presiding Officer emphasized that the petitioner's actions, including creating false documents, demonstrated a lack of respect for ethical and professional standards.



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31. Therefore, the learned Tribunal was of the view that there is no fault with the disciplinary actions taken by the management, stating that the order of compulsory retirement was legal and justified. It further observed that the employees of the nationalized bank shall maintain higher standard of morale and integrity.

32. In light of the same, this Court is of the view that the learned Tribunal has dealt with all the contentions of the petitioners and therefore held that the disciplinary actions were justified as the petitioner failed to produce any document to supplement her contentions.

33. The petitioner herself has admitted on taking loan as well forging the documents in this regard and wrongly denied that she did not admit forging the documents before the learned Tribunal. In this regard, the learned Tribunal has correctly held that the petitioner has admitted her acts and never denied before the Authorities that she is accepting taking loan and not forging the documents, thereby the same is an after- thought.

34. The learned Tribunal has further correctly held that the two chargesheets dealt with different charges, therefore, the petitioner was not penalized on the same charges twice.

35. This Court observes that despite the fact that the petitioner was being warned by the respondent no. 1 on earlier occasion to not take any further loan, the petitioner in complete disregard of the instructions, again took loan. The act of the petitioner demonstrates a disregard for ethical and professional standards which is expected from an employee of a national bank.



CONCLUSION

36. This Court is of the view that the grounds raised by the petitioner for setting aside the impugned award do not merit interference of this Court since, there is no error apparent on the face of the award. The learned Labour Tribunal has considered the plea of the petitioner along with the evidence and accordingly, it adjudicated upon it.

37. The writ of certiorari cannot be issued in the present matter since for the issue of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

38. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

39. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the rejection letters despite the fact that there are no such special circumstances that require the interference of this Court. The petitioner is not aggrieved by any such violation of the rights, which merits intervention of this Court in the orders passed by the respondent.



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40. In light of the aforesaid submissions, this Court is of the view that the impugned award does not suffer from any illegality and does not warrant any intervention of this Court by way of issuance of any writ. The petitioner has not been able to make out a case in her favour.

41. Accordingly, this Court upholds the impugned award dated 22nd February, 2011 by the learned Presiding Officer, Central Government Industrial Tribunal Cum Labour Court-II, New Delhi as no infirmity is found in the same.

42. The instant petition is dismissed along with pending applications, if any.

43. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 3, 2024
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