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

% ***Date of Decision: 19th September, 2024***

+ LPA 941/2024

PUNJAB NATIONAL BANK

.....Appellant

Through: Mr. Rajesh Kumar Gautam, Mr.
Anant Gautam, Mr. Dinesh Sharma,
Mr. Likivi K Jakhalu & Mr. Kushagra
Nilesh Sahay, Advocates

versus

KARTAR SINGH

.....Respondent

Through: Mr. Piyush Sharma & Mr. Anuj
Kumar Sharma, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CAV 466/2024

1. Since the learned counsel for caveator/respondent has entered his appearance, the caveat stands discharged.

LPA 941/2024 & CM APPL.54946/2024, CM APPL.54948/2024, CM APPL.54947/2024 & CM APPL.54949/2024

2. Notice issued.

3. Mr. Piyush Sharma, Advocate accepts notice on behalf of respondent.

4. With the consent of learned counsel for the parties, the present appeal is taken up for hearing and disposal today.

5. The present appeal is preferred under Clause X of the Letter Patent Act against the judgment and order dated 21.05.2024 passed by the learned

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Single Judge in W.P.(C) 2585/2006, whereby the said writ petition filed by the appellant against the Award dated 16.11.2005 passed by the learned Presiding Officer, Industrial Dispute Tribunal in ID No. 175/1999, has been dismissed.

6. The brief facts of the case, as narrated by the appellant in the present appeal, are that respondent was appointed as *Daftari* with erstwhile New Bank of India in the year 1975. On the basis of Report dated 14.05.1990 by the Chief Vigilance Officer, he was issued charge sheet dated 25.05.1990 alleging tempering of Bank's record; marking his attendance by cutting the noting in the Attendance Register and withdrawing various sums of money from his account without having sufficient balance in his account on the basis of vouchers.

7. The respondent submitted his reply dated 23.07.1990 denying the allegations in the charge sheet, pleading that the amount withdrawn by him already stood adjusted.

8. A regular Departmental Enquiry was initiated against him vide order dated 30.07.1990. The Respondent herein was also issued second Charge Sheet dated 06.12.1990 alleging that he had opened a current account in the name of fictitious firm and thus acted prejudicial to the interest of the bank.

9. After conclusion of which the Enquiry Officer, in respect of first charge sheet dated 25.05.1990 submitted the Report dated 04.09.1991 holding that charges levelled against him stood proved.

10. In respect of second charge sheet dated 06.12.1990, the Enquiry officer submitted his report dated 05.02.1992 holding that the allegations against the respondent stood proved.



11. The Disciplinary Authority, in respect of first charge-sheet dated 25.05.1990, issued Show Cause Notice dated 28.10.1992 to the respondent, proposing punishment of dismissal from service. After hearing an opportunity of personal hearing on 16.12.1992; the Disciplinary Authority vide order dated 16.01.1993 imposed punishment of 'dismissal from service' upon the respondent. On the same day i.e. 16.01.1992, the Disciplinary Authority in respect of second charge sheet dated 06.12.1990 passed order of respondent's 'dismissal from service'.

12. The respondent preferred a departmental appeal dated 01.03.1993 against the order of 'dismissal from service' in respect of Charge Sheet dated 25.05.1990. However, according to appellant, due to merger of New Bank of India with appellant-Bank, the appeal could not be disposed of in time.

13. The respondent in the year 1998, raised Industrial Dispute, during pendency of the appeal dated 01.03.1993, which was after six years referred by the Government to the Industrial Tribunal for adjudication.

14. The Appellate Authority of the Bank traced out the record and vide order dated 10.10.2000 rejected the appeal of the respondent. However, since respondent's case was under adjudication before the learned Tribunal, the respondent filed Statement of Claims dated 29.01.2000. The appellate-Bank in its written statement filed before the Tribunal submitted that in view of order dated 10.10.2000 passed by the Appellate Authority, that the reference before the Tribunal had become infructuous.

15. According to appellant, the respondent after a long delay filed his affidavit dated 11.05.2005 before the learned Tribunal, however, no cross-



examination was recorded. The appellant-Bank as well as respondent filed their written arguments before the learned Tribunal.

16. The learned Tribunal vide Award dated 16.11.2005 held that punishment imposed upon the respondent is disproportionate to the charges leveled against him and therefore, directed reinstatement of respondent with full back wages and modified the punishment to that of stoppage of four increments with cumulative effect.

17. Against the Award dated 16.11.2005, the appellant – Bank preferred writ petition being W.P.(C) No. 2585/2006 before the learned Single Bench, which was dismissed vide order dated 16.11.2005 holding as under:-

“51. Applying the above discussed principles of law, this Court is of the considered view that after holding that the punishment of dismissal imposed upon the respondent was not justified, the learned Tribunal rightly modified and reduced the punishment so as to make it commensurate with the misconduct by the respondent workman.

52. Furthermore, under the exercise of writ jurisdiction, it is neither proper nor intended by this Court to re-examine the evidence on record or to adjudicate upon the dispute involving quantum of punishment, in a bid to find faults in the findings of the learned Tribunal.

53. Considering the above, this Court does not find any merit in the proposition put forth by the petitioner as the impugned award has been passed after taking into consideration the entire facts and circumstances as well as the settled principles of law. Perusal of the preceding paragraphs makes it evident that the learned Tribunal had exercised



its powers in accordance with the jurisdiction conferred upon it and there is no illegality of any kind thereto. In light of the same, the instant writ petition being bereft of any merit is liable to be dismissed.”

18. The challenge to the judgment dated 21.05.2024 is on the ground that the learned Single Bench did not consider that after dismissal of departmental appeal filed by the respondent vide order dated 10.10.2000, the reference made to the Industrial Tribunal had become infructuous. Also, the reference was only in respect of first charge-sheet dated 25.05.1990 and not in respect of second charge-sheet dated 06.12.1990, in respect of which a separate order of dismissal was passed on 16.01.1993.

19. Learned counsel appearing on behalf of appellant has submitted that the allegation levelled in the second charge sheet dated 06.12.1990 was in respect of a Current Account No. 3156 in the name of M/s. GS Trading Company opened by the respondent on 06.12.1989, which was a fictitious firm, in respect of which respondent herein had received a cheque drawn on Branch Office Meerut which was issued by a Third Party bearing current account No. 138 for Rs. 10,000/- and the respondent persuaded the Assistant Manager to purchase the said cheque at his risk, which was not sent for collection till 06.12.1990.

20. It is also pleaded that the learned Single Bench did not appreciate that the learned Tribunal at one place has directed punishment of withholding of 02 AGIs with cumulative effect, however, in the final directions the Industrial Tribunal has modified the punishment of dismissal without notice to that of stoppage of 04 AGIs with cumulative effect.



21. To the contrary, learned counsel appearing on behalf of respondent submits that there is no merit in the present appeal and it deserves to be dismissed.

22. We have heard counsel for the parties and perused the impugned order dated 21.05.2024 passed by the learned Single Bench in W.P.(C) 2585/2006 as well as Award passed by the learned Tribunal.

23. This Court finds that the learned Tribunal in the impugned Award has taken note of the fact that the respondent –workman had made an appeal, but the Appellate Authority of appellant did not dispose of the same for seven years and the respondent, was thus compelled to get the matter referred to the Tribunal. However, after reference was made, the Appellate Authority of appellant, without even putting the respondent to notice, dismissed the appeal. The learned Tribunal held that at worst the appellant should have treated the respondent absent on two dates, in respect of which tampering was found in the attendance register. Though there was no report of the Inquiry Expert to lead to an inevitable conclusion that the tampering was made by the respondent.

24. In respect of excess withdrawal from his bank account, the Tribunal held that the respondent was an employee of the bank and so, the Branch Manager sanctioned the same, so, it was not only his fault but even the Branch Manager has to be held responsible. Thus, the Tribunal held that penalty of ‘dismissal from service’ was vindictive, unjust and shockingly disproportionate. Having observed above, the learned Tribunal held as under:-

“In the present facts and circumstances of the case



withholding of two increments with cumulative effect, is sufficient punishment in case the entire enquiry proceedings are considered fair and just. The law cited by the management is not applicable in the facts and circumstances of the case.

The reference is replied thus:-

Sh. Kartar Singh. Ex Daftary in the NBI/ Krishna Nagar Branch, Delhi-51 is reinstated w.e.f. 16-1-1993,. i.e., the date of his dismissal without notice with stoppage of four increments with cumulative effect. The management/ respondents will withheld four increments with cumulative effect and reinstate the workman applicant with full back wages and pay him the arrears of wages less the amount resulting, by withholding, four increments with cumulative effect within two months from the publication of award.

Award is given accordingly.”

25. Upon going through the impugned Award and impugned judgment passed by the learned Single Bench, this Court finds that the learned Tribunal has explicitly noted that the respondent had challenged his dismissal only with respect to charge sheet dated 25.05.1990 and he had not challenged charge sheet dated 06.12.1990 before the learned Tribunal. Thus, the learned Single Bench in the impugned judgment had only dealt with Award passed by the Tribunal in respect of charge sheet dated 25.05.1990 and so, has this Court.

26. The learned Single Bench in the impugned judgment took note of the fact that adjudication in respect of present case is pending for last 18 years. The learned Single Bench in light of provisions of Section 11 of the Act, held that the Industrial Tribunals/Labour Courts are empowered to set aside



the punishment of discharge or dismissal of a workman in addition to granting the workman reinstatement, or the punishment may also be converted to a lesser one. Further held that once the learned Tribunal has opined that the misconduct of the respondent was not grave, it has rightly held that the punishment of dismissal imposed upon respondent was not justified.

27. However, the learned single despite noting the contention of learned counsel for the appellant that the learned Tribunal in the impugned Award has mentioned two punishments, namely, “withholding of two increments” at one place and “withholding of four increments” at other, which are self-contradictory in nature, has not dealt with it.

28. In the facts of the present case, we are of the opinion that the learned Tribunal in reply to the Reference has awarded punishment of withholding four increments with cumulative effect, while directing reinstatement of respondent, which is just and proper. Thus, the observation of the Tribunal that withholding of two increments with cumulative effect, is mere expression and thus, we set aside the same.

29. However, the learned Tribunal has awarded respondent’s reinstatement with full back wages, which cannot be permitted based upon the principle of ‘no work no pay’. We hereby modify the order passed by the Tribunal, which is upheld by the learned Single Judge, to the extent and hold that the respondent shall be entitled to 50% back wages for the period he has not performed his duties.

30. Before parting with this judgment, we make it clear that this Court has not rendered any opinion upon the aspect of second Charge Sheet dated



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06.12.1990, which was not subject matter before the learned Tribunal or the learned Single Bench.

31. With aforesaid, the present petition and pending applications are accordingly disposed of.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

SEPTEMBER 19, 2024

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