



2024:DHC:1961



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

% **Date of order : 12th March, 2024**

+ **W.P.(C) 4235/2017 & CM APPL. 18497/2017**
THE REGIONAL MANAGER CENTRAL BANK OF INDIA

..... Petitioner

Through: Appearance not given
versus

KUNWAR PAL SINGH

..... Respondent

Through: Mr. K. Prabhakara Rao, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed on behalf of petitioner seeking the following reliefs:-

"i) issue writ of certiorari or any other writ, order or direction in the nature therefore calling for the record of the proceedings and award Award dated 03.01.2017 passed by Ld. CGIT in case bearing I. D. No. 153/2012, and quash the entire proceedings and impugned award there in;

ii) in the alternative the matter may be remanded back to the Ld. CGIT to give permission to the petitioner for leading evidence before it and then passed the award;

iii) pass such other and further orders as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

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



- a) The respondent herein (“respondent workman” hereinafter) was appointed as a ‘Clerk’ in the year 1987, in the petitioner entity, i.e., the Regional Manager Central Bank of India (“petitioner Bank” hereinafter). While working as CTO in Branch Office Press Area, Delhi, the respondent workman was issued a charge-sheet bearing No. ROB / HRD / DAP-MISC / 2007-08 / 831 dated 2nd February, 2008 by the petitioner Bank, in terms of the allegation of misappropriation of public funds amounting to Rs.4139/- against the respondent workman.
- b) Subsequently, an Inquiry Officer was appointed to inquire into the charges leveled against the respondent workman. The Inquiry Officer initiated the inquiry against the respondent workman and submitted the report dated 14th June, 2008, wherein, all the charges levelled against the respondent workman were fully established. Pursuant to the above, the Disciplinary Authority *vide* order dated 19th September, 2009, awarded a penalty of dismissal to the respondent workman.
- c) Thereafter, the respondent workman filed an appeal dated 3rd November, 2008, before the Appellate Authority which was dismissed *vide* order dated 18th March, 2009, thereby, confirming the aforementioned order passed by the Disciplinary Authority.
- d) After his dismissal, the respondent workman raised an Industrial Dispute and pursuant to which the Ministry of Labour and Employment *vide* dated 18th October, 2012, bearing No.L-12012/61/2012-IR(B-11) under Clause (d) of sub-Section 1 and sub-



Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 ("I.D Act" hereinafter), referred the dispute for adjudication before the Central Government Industrial Tribunal-cum-Labour Court-I, Karkardooma Courts Complex, Delhi ("learned Tribunal" hereinafter) in the following terms.:-

“Whether the action of the Management of Central Bank of India in imposing the punishment of dismissal on Shri Kunwar Pal Singh Ex. Clerk vide order dated 19.09.2008 is legal and justified? What relief the concerned workman is entitled to.”

- e) Thereafter, the respondent workman on 3rd December, 2012, filed his statement of claim before the learned Tribunal and the petitioner Bank filed its written statement to the claim petition on 1st February, 2013.
- f) After completion of pleadings, the learned Tribunal framed three issues on 1st February, 2013, wherein, the issue No.1 was treated as the preliminary issue i.e. *‘whether the inquiry conducted by the Management was just, fair and proper?’*
- g) The learned Tribunal vide order dated 29th February, 2014, decided the preliminary issue against the petitioner Bank and in favour of the respondent workman.
- h) Subsequently, the petitioner Bank filed an application dated 2nd March, 2016, seeking permission of the learned Tribunal to adduce fresh evidence and prove the alleged misconduct of the workman on merits and the same was contested by the respondent.
- i) The learned Tribunal vide order dated 31st November, 2016, dismissed



the aforementioned application and thereafter, passed the impugned award dated 3rd January, 2017, thereby, directing the petitioner Bank to reinstate the respondent workman with all the consequential benefits and sent the same for publication in the Official Gazette.

j) Therefore, aggrieved by the aforementioned award, the petitioner Bank has preferred the instant writ petition under Article 226 of the Constitution seeking quashing of the impugned award dated 3rd January, 2017.

3. Learned counsel appearing on behalf of the petitioner submitted that the award passed by the learned Tribunal is based on surmises and conjecture, and therefore, is liable to be set aside.

4. It is submitted that the findings of the learned Tribunal are adverse and highly prejudicial to the petitioner Bank as the same has been passed without considering the fact that the respondent workman was dismissed from service by the competent authority after taking into consideration the report of the Inquiry Officer.

5. It is further submitted that the order of dismissal was passed after following the procedure prescribed under law, in accordance with the bipartite settlement and the respondent workman was given an adequate opportunity to make out his case. Therefore, there is no illegality and arbitrariness *qua* the order of dismissal as erroneously held by the learned Tribunal.

6. Learned counsel appearing on behalf of the petitioner also submitted that the learned Tribunal has erred in directing the petitioner to reinstate the



respondent with all consequential benefits, without considering the grave misconduct committed by the respondent workman i.e., misappropriation of funds from the petitioner Bank.

7. It is submitted that the learned Tribunal has failed to appreciate that the respondent was guilty of misappropriation of funds, which is a serious offence thus making him unfit to be retained in the employment of the petitioner Bank. To strengthen his argument, the learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Suresh Pathrella vs. Oriental Bank of Commerce*, 2007 LLR 144.

8. It is submitted that the learned Tribunal denied the opportunity to lead fresh evidence and prove the charges of misconduct levied against the respondent workman, which is contrary to the settled position of law.

9. It is submitted that the law is fairly settled that the management can at any time, during the pendency of the proceedings before the Tribunal, file an application to lead fresh evidence and in order to strengthen the said argument, the reliance has been placed upon the judgment dated 19th April, 2010 passed by this Court in **W.P.(C) No. 108/2004** in case titled *Delhi Transport Corporation vs. Sunil Kumar*.

10. It is submitted that the learned Tribunal has erroneously held that the inquiry conducted by the Inquiry Officer on behalf of the petitioner Bank was vitiated for non-application of principles of natural justice as the respondent was not furnished with the requisite documents relied upon by the Inquiry Officer to conclude the said inquiry. It is also submitted that the



learned Tribunal could have summoned the documents as no prejudice was caused to the respondent. Reliance in this regard has been placed upon the judgment passed by the Hon'ble Supreme Court in the case ***State Bank of India vs. Bidyut Kumar Mitra & Ors., (2011) 2 SCC 316*** and in ***Karnataka State Road Transport Corporation vs. Smt. Lakshmideveamma & Anr., AIR 2001 SC 2090***.

11. It is submitted that in the case of ***Sh. Mohd. Azim vs. Sarv UP Gramin Bank, W.P.(C) 4049/2012*** this Court *vide* judgment dated 24th March, 2015 held as under:-

"...20. It is observed in the light of the decision of the Ho'ble Supreme Court in Karnataka State Road Transport Corporation' (supra) that although the management has to seek the leave of the court/tribunal in the written statement itself to lead additional evidence to support its action, however, no fetters can be placed on the powers of the Labour Court/ Tribunal to require or direct parties to lead additional evidence including the production of documents at any stage or proceedings before they are concluded. Thus, the Labour Court is well within its powers if it directs or requires from the management to produce evidence of misconduct of workman once the inquiry held by it is vitiated. In 'Divyash Pandit' (supra) the Ho'ble Supreme court has gone a step ahead and held that the court may even permit the management to do so even though the management has not made any such prayer in its written statement.

21. In the case before this court the management has moved an application to lead evidences for proving charges against the petitioner on 08.02.2011 after the domestic enquiry held by the management was vitiated by the Industrial Tribunal on 24.01.2011. The said application was allowed by the Labour Court on the same day, i.e., vide impugned order dated



08.02.2011. As observed above, the consequence of the inquiry proceeding being struck down by the Labour Court/Industrial Tribunal is not an automatic order of reinstatement of the workman rather, the Labour Court/ Industrial Tribunal is competent to hear both the sides on the charges of misconduct of the workman. The Labour Court/ Industrial Tribunal is competent to allow the management to produce evidence to this effect even in the absence of the prayer made by the management in its written statements as per 'Karanata State Road Transport Corporation' (supra) and 'Divyash Pandit' (supra). Hence, in the present case no infirmity can be attributed to the impugned order dated 08.02.2011 whereby the Industrial Tribunal allowed the management to produce evidences to prove petitioner's misconduct..."

12. Learned counsel appearing on behalf of petitioner submitted that as per the settled position of law and the established procedure, the learned Tribunal framed a preliminary issue as to whether the inquiry conducted against the respondent workman was just, fair and in accordance with law, and the learned Tribunal concluded that the inquiry is bad for violation of principles of natural justice and gave a finding against the petitioner management.

13. It is submitted that the learned Tribunal has erred in law as it ought to have given the petitioner Bank an opportunity to lead fresh evidence before it in order to prove the charges levied against the respondent workman but no such orders were passed by the learned Tribunal and the application in this regard was dismissed.

14. Learned counsel appearing on behalf of petitioner submitted that the Industrial Tribunals are entrusted with the limited jurisdiction and shall



adjudicate upon the matters in terms of the reference alone, referred to them under Section 10(1)(d) of the I.D Act. The Tribunal is entitled to deal with the disputes referred to them and cannot travel outside the terms of the reference and must not deal with the matters not included in the reference, subject to incidental matters, which fall within their jurisdiction.

15. It is further submitted that the learned Tribunal has adjudicated the matter beyond the terms of reference, which is apparent on the face of the impugned award and is impermissible in law. To strengthen the said argument, the learned counsel has relied upon two cases namely ***Bombay Gas Company Vs. Gopal Bhiva & Others, 1963 II LLJ Page 608 (SC)*** and the judgment in ***Pottery Mazdoor Panchayat Vs. Perfect Pottery Co. Ltd. and Anr., 1979 (3) SCC 762.***

16. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner Bank seeks that the instant petition may be allowed, and the relief be granted, as prayed.

17. *Per contra*, learned counsel appearing on behalf of respondent workman submitted that the instant petition is misconceived and has been filed on the misinterpretation of the provisions of the I.D Act and the law laid down by Hon'ble Supreme Court as well as by this Court in various judgments. Hence, the instant writ petition, being devoid of any merit is liable to be dismissed.

18. Learned counsel appearing on behalf of respondent workman submitted that while adjudicating the reference made by the appropriate government i.e., whether the action of the petitioner Bank in imposing the



punishment of dismissal of the respondent workman w.e.f. 19th September, 2009 is legal and justified, the learned Tribunal after completion of pleadings, framed the following three issues:-

- "(i) Whether the enquiry conducted by the management was just, fair and proper?*
- (ii) Whether punishment of dismissal from service commensurate to the misconduct committed by the claimant?*
- (iii) As in terms of reference."*

19. It is submitted that Issue No.1 was treated as a preliminary issue and thereafter, opportunity was given to both the parties to adduce evidence on the said issue. It is submitted that the learned Tribunal *vide* order dated 29th February, 2016, opined that the inquiry conducted by the management was illegal, arbitrary and in negation of the principles of natural justice and thereby, decided the preliminary issue against the petitioner and in favour of the workman.

20. It is submitted that it is an admitted position that the petitioner Bank had not sought permission of the learned Tribunal, in its written statement to prove the charges of misconduct levelled against the respondent workman, by leading further evidence, in case the domestic inquiry conducted by the Inquiry Officer was found to be arbitrary or unjust.

21. It is submitted that it was after the preliminary issue was decided in favour of the respondent workman, the petitioner Bank moved an application seeking permission of the learned Tribunal to prove the alleged misconduct of the respondent workman.

22. It is further submitted that the petitioner Bank ought to have sought



permission of the learned Tribunal to lead any further evidence in the written statement itself as an alternative prayer, in the event the learned Tribunal decided the fairness of inquiry against the management.

23. It is submitted that it is a settled position of law that if the management does not plead in the written statements to seek permission of the learned Tribunal to lead fresh evidence, but wait until the learned Tribunal concluded its findings thereby, holding the domestic inquiry being vitiated, the management is precluded from seeking the same by moving an application after the preliminary issue was decided.

24. Learned counsel appearing on behalf of respondent submitted that prior to the judgment passed by the Constitution Bench in ***Lakshmidheevamma Case (Supra)***, there were conflicting opinions rendered by the Hon'ble Supreme Court as to at what stage is the management entitled to seek permission of the learned Tribunal to adduce fresh evidence in justification of its decision taken on the basis of domestic inquiry.

25. It is submitted that the varying opinions i.e., whether such permission should be sought in the written statement at the threshold or it can be sought at any time before the proceedings are closed before the learned Tribunal came be to resolved *vide* the Constitution Bench of the Hon'ble Supreme Court in ***Karnataka (Supra)*** wherein it was observed that the appropriate stage to seek permission to lead additional evidence to prove the charges is in the written statement itself and not after the Tribunal has concluded its findings thereby, holding that the domestic inquiry was vitiated.

26. Learned counsel appearing on behalf of respondent submitted that



there are several facts of the case which do not warrant interference in the impugned award or to remand back to the learned Labour Court to give permission for leading evidence before it. The said facts are as follows:

“(i) The allegation against the respondent is while working as a clerk on 31.05.2007 he misappropriated bank fund tuning an amount of just Rs.4,139/- (Rupees four thousand one hundred thirty nine only) by unlawfully crediting the amount in his overdraft account maintained in some other branch.

(ii) That the petitioner that the management issued memorandum seeking explanation on 21.06.2007, 21 days after the about said wrong entry was made in the respondent's account. During these 21 days, the respondent had not withdrawn this amount proving the innocence of the petitioner.

(iii) That respondent being a clerk can just make entries in the accounts operated in the computer. If any entry was made by the clerk it would not become valid till it is passed by the passing official and later on authorized by another passing official, who is above the rank of first passing official. Here, the erroneous entry made by the respondent for an amount of Rs.4,139/- was passed by the first passing official, Sh. H.B. Johri, Manager and later on authorized by Sh. J.K. Sharma, Manager. If a clerk by mistake makes any entry without corresponding vouchers, he does not have any power to reverse the entry and only the higher passing officials can reverse the entry after obtaining corresponding vouchers along with reverse vouchers. As such, in this case, the respondent cannot be charged with the misappropriation of the bank funds, as he has neither passed the entry nor authorized the entry.

(iv) The respondent has unblemished service record from the date of his joining the services in December, 1987 in the petitioner's bank. After 20 years of unblemished service, on 21.06.2007, first time in his career he was asked to explain about the charge of misappropriation of just paltry sum of Rs.4139/- credited in his overdraft account without proper



authorizing debit voucher. It is not out of place to mention that the respondent had also qualified the promotional test held for promotion to the post of Assistant Manager in the JMG Scale - I (Main Stream) under the All India Services 2007-2008 against the result declared on 31.01.2008 and the charge sheet was issued on 2.2.2008 with the malafide intention to spoil his career.

(v) That the respondent is about 52 years. At the time of termination of his services, he was about 43 years. He could not get any alternative employment as he crossed the middle age. Despite his best efforts, he could not get any alternative employment. Moreover, the false allegation that he misappropriated the bank funds ruined his reputation and he was defamed in the family and friends. Mental agony and financial distress crippled him psychologically.”

27. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the present petition, being devoid of any merit, may be dismissed.

28. Heard learned counsel appearing on behalf of the parties and perused the record.

29. Before delving into the averments advanced by the learned counsel appearing on behalf of the parties, this Court deems it apposite to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances.

30. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has



adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the Constitutional Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a lower Court only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Court is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

31. Now adverting to the facts of the matter in hand.

32. The petitioner has approached this Court seeking issuance of a writ of certiorari to set aside the findings of the learned Tribunal as passed *vide* the impugned award. The petitioner Bank has primarily contended before this Court the aspect, wherein, the permission sought by the petitioner by way of an application for leading fresh evidence to prove the alleged misconduct of the respondent workman was denied. The petitioner Bank asserts the same stating to the effect that the same is contrary to the settled position of law as



the management can file an application for leading fresh evidence at any time during the pendency of proceedings before the learned Tribunal.

33. It is further contended that the learned Tribunal arbitrarily concluded its findings stating thereby that the departmental inquiry concluded by the inquiry officer, without giving adequate opportunity to the respondent workman to defend his case and also not supplying the documents to the respondent workman is violative of the principles of natural justice and contrary to the law laid down by the Hon'ble Supreme Court as well as different High Courts. The petitioner further contends that the learned Tribunal has wrongfully ordered the reinstatement of the respondent workman with all the consequential benefits *vide* the impugned award without fully considering the fact that the respondent workman committed a grave misconduct by misappropriating funds from the petitioner Bank.

34. In rival contentions, the learned counsel appearing on behalf of respondent has contended that the award impugned by the petitioner is well reasoned, has been passed after profoundly considering all factors and evidence placed before the learned Tribunal and there is no illegality or error apparent on the face of the record. It is further contended that it is a settled position of law as per which when the Tribunal/Court decides the preliminary issue against the petitioner management, the petitioner is barred from adducing fresh evidence to prove the alleged misconduct of the respondent by way of moving an application in such regard and the appropriate stage to seek permission is in the written statements and not after the findings of the Tribunal are against the management.



35. The respondent workman has relied upon the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of **Lakshmidiveamma Case (Supra)**. Therefore, in light of the settled principles of law, the respondent strongly contends that the instant petition may be dismissed as there does not exist any ground under which interference of this Court may be sought to set aside the impugned order passed by the learned Tribunal.

36. In order to adjudicate the present case, this Court deems it imperative to analyze the findings of the impugned award and ascertain the reasoning afforded by the learned Tribunal. The relevant paragraphs of the impugned award are reproduced herein below:

"...14. After hearing learned authorized representatives of the parties, I do not find merit in the contention of the management. There is merit in the contention of the workman that he was not supplied with the documents as desired by him during the course of domestic enquiry. In this regard it is appropriate to have a look at the document Ex.MW1/4. The Presenting Officer has specifically mentioned (page 53 of the proceedings of domestic enquiry) that the documents listed at serial Nos.7, 8, 9 and 10 demanded by the witness are of 'privilege nature', that is why these documents cannot be supplied. During the course of arguments, this Tribunal wanted to know from the learned authorized representative of the management as to how these documents can be termed to be privileged when reliance upon the same is being placed by the management during conduct of the domestic enquiry. The learned authorized representative of the management could not cite any provision of law or rulings of any court so as to justify denial of the above documents. Moreover, these documents have been prepared by the bank in the discharge of official duty. They are in the form of



attendance register etc. and by no stretch of reasoning they can be claimed to be privileged documents or privileged communications, which are protected under section 124 - 127 of the Evidence Act. I find support to this view of mine from the judgement of the Hon'ble Apex Court in the case of Bilaspur Raipur Kshetriya Gramin Bank vs. Madanlal Tandon (2015 Lab.I.C. 3757) wherein the delinquent official was a Field Supervisor in a bank and was charge sheeted for misconduct resulting in stoppage of two annual increments. Finally when matter reached before the Hon'ble Apex Court, it was held that documents on which reliance was placed by the Enquiry Officer for framing the charges were not supplied to the delinquent official. Moreover, no list of documents and witnesses was also supplied in the said case. Same was held to be fatal to the case of the management. Similar view appears to be taken in the case of Tirlok Nath vs. Union of India (1969 SLR 759) wherein it was reiterated that public servant has to be furnished with all the relevant documents, i.e. documents which are to be relied upon by the Enquiry Officer or required by the public servant for his defence, failing which enquiry was held to be in violation of principles of natural justice.

15. It was also argued with much vehemence that the punishment awarded to the workman herein is disproportionate, particularly with the other two co-delinquents have been awarded very less punishment by the management by imposing punishment of withholding of one increment with cumulative effect. Since in the case in hand, fair opportunity to cross examine the witness Shri John after his re-examination was not afforded to the workman nor was the workman supplied with the documents mentioned at serial Nos.7, 8, 9 and 10 of the list of documents relied upon by the management during the course of domestic enquiry, as such, this Tribunal is of the considered opinion that the above act of the management is totally illegal and in negation of the principles of natural



justice.

16. This Tribunal vide order dated 29.02.2014 has held that the domestic enquiry conducted by the management is unfair and against principles of natural justice. Thereafter, an application was moved by the management seeking permission to prove misconduct of the workman on merits. The said application was also contested by the workman, who has specifically alleged in the reply that management, in its written statement, has nowhere sought permission to prove charges of misconduct leveled against the workman on merits, in case domestic enquiry is found to be unfair or bad in law. Not only this, even on conclusion of the domestic enquiry or during currency of the proceedings after framing of issues by this Tribunal, no effort was made by the management to seek permission of this Tribunal to adduce evidence on merits in case findings on the domestic enquiry is held to be unfair and void under the law. This Tribunal placed reliance upon the case of Shambu Nath Goyal vs Bank of Baroda, which was later on approved by the Hon'ble Apex Court in Karnataka State Road Transport Corporation Vs Laxmidevamma (2001) Lab.IC 777) holding that the management has forfeited its right to adduce evidence on merits as it has not reserved its right in the written statement or pleadings nor requisite application was moved by the management till conclusion of the domestic enquiry or findings rendered on domestic enquiry by this Tribunal. Resultantly, the said application was also rejected by this Tribunal vide order dated 31.11.2016.

Issue No.2

17. Now, the residual question is, whether punishment of dismissal from service commensurate to the misconduct committed by the claimant since this Tribunal has already held that domestic enquiry conducted by the management is unjust, unfair and against principles of natural justice. As such, question of proportionality of punishment pales into



insignificance inasmuch as nothing survives against the claimant in the form of misconduct. Question of gravity of misconduct or punishment so awarded would have been relevant only if the findings of this Tribunal on domestic enquiry been in favour of the management.

18. As a sequel to my above discussion, it is held that action of the management of Central Bank of India, i.e. the management, in imposing punishment of dismissal of Shri Kunwar Pal Singh, claimant herein vide order dated 19.09.2008 is not legal and justified under the law. As a necessary corollary, the claimant is entitled to be reinstated in service with all consequential benefits. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication..."

37. Upon perusal of the aforementioned award, it can be summarily stated that the learned Tribunal has considered the entirety of the matter as well as the evidence on record and reached to the conclusion that the inquiry conducted by the department against the respondent workman was not in consonance with the procedure prescribed under the law.

38. Taking note of Ex.MW1/4 and the contentions advanced by the ARs of the parties, the learned Tribunal observed that during the course of the domestic inquiry proceedings, the respondent workman had sought furnishing of certain documents, but the Inquiry Officer denied furnishing of the said documents stating them to be 'privileged documents'.

39. In light of the aforementioned contentions, the learned Tribunal opined that the petitioner management has failed to support its stance under any provision of law. The said documents are in the form of attendance



register etc., which by no stretch of imagination can be said to be privileged documents. Thus, placing reliance on the judgement in ***Bilaspur Raipur Kshetriya Gramin Bank vs. Madanlal Tandon***, 2015 Lab. I.C. 3757 and ***Tirlok Nath vs. Union of India***, 1969 SLR 759, it concluded that the domestic inquiry has not been carried out in accordance with law and non-furnishing of the said documents amounts to violation of the principles of natural justice.

40. Another aspect that has been observed by the learned Tribunal is that the petitioner management moved an application seeking leave of the Tribunal to prove the alleged misconduct of the respondent workman by adducing fresh evidence.

41. The learned Tribunal, whilst placing reliance on the ratio in ***Lakshmidheevamma Case (Supra)*** opined that the management has forfeited its rights by not taking a plea in this regard in its written statement or before the conclusion of the findings of the learned Tribunal on the departmental inquiry, rather it is after the learned Tribunal observed that the domestic inquiry was unfair and violative of principles of natural justice, the petitioner management moved the application.

42. At this Juncture, it is apposite for this Court to deal with the issues contended by the parties. The Hon'ble Supreme Court in ***Shankar Chakravarti v. Britannia Biscuit Co. Ltd.***, (1979) 3 SCC 371, observed that it is for the employer to avail an opportunity by making a specific plea or by specific request and only if the same is in the course of the proceeding, the Tribunal/Labour Court should grant the opportunity to lead additional



evidence to substantiate the charges. In case, no such opportunity is sought, nor there is any pleading to that effect, no duty is cast on the Labour Court/Industrial Tribunal to *suo motu* call upon the employer to adduce additional evidence to substantiate the charges. The relevant paragraphs are reproduced herein below:

*“32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well-settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would be tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in *Tin Printers (Private) Ltd. v. Industrial Tribunal* [(1967) 2 LLJ 677, 680 (Punj HC)] commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically*



pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.

33. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication? The answer must be an emphatic “no”.

34. The employer terminates the service of a workman. That termination raises an industrial dispute either by way of an application under Section 33 of the Act by the employer or by way of a reference by the appropriate Government under Section 10. If an application is made by the employer as it is required to be made in the prescribed form all facts are required to be pleaded. If a relief is asked for in the alternative that has to be pleaded. In an application under Section 33 the employer has to plead that a domestic enquiry has been held and it is legal and valid. In the alternative it must plead that if the Labour Court or Industrial Tribunal comes to the conclusion that either there was no enquiry or the one held was defective, the employer would adduce evidence to substantiate the charges of misconduct alleged against the workman. Now, if no such pleading is put forth either at the initial stage or during the pendency of the proceedings there arises no question of a sort of advisory role of the Labour Court or the Industrial Tribunal, unintended by the Act to advise the employer, a party much better off than the workman, to inform it about its rights, namely, right to lead additional evidence and then give an opportunity which was never sought. This runs counter to the grain of industrial jurisprudence. Undoubtedly, if such a pleading is raised and an opportunity is sought, it is to be given but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings there is no duty cast by law or by the rules of justice, reason and fair play that a quasi-judicial Tribunal



like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights, namely, the right to adduce additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to adduce additional evidence. This, apart from being unfair to the workman, is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing the decision of a lis between the parties arrayed before a quasi-judicial Tribunal.

35. Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. case to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudication upon a penal termination of service of a workman either under Section 10 or under Section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to



call upon the employer to adduce additional evidence to substantiate the charges.

36. Viewed from this angle, in the present case there was neither a pleading in which any such claim for adducing additional evidence was made, nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the Award and till the Award was made. The case squarely falls within the ratio of Delhi Cloth & General Mills Co. case. Therefore, the Division Bench of the Calcutta High Court was clearly in error in granting such a non-sought opportunity at the stage of the Letters Patent Appeal.”

43. The 5 Judge Constitutional Bench of the Hon’ble Supreme Court in ***Lakshmidheamma Case (Supra)***, dealt with the difference of opinion by the various Benches of the Hon’ble Supreme Court and concluded that the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. The relevant paragraphs are reproduced herein below:

“44. The question as to at what stage the management should seek leave of the Labour Court/Tribunal to lead evidence/additional evidence justifying its action is considered in the draft judgment of Hegde, J. and not the power of the court/tribunal requiring or directing the parties to produce evidence if deemed fit in a given case having regard to the facts and circumstances of that case. As per Section 11(1) of the Industrial Disputes Act, 1947 (for short “the Act”) a court/tribunal can follow the procedure which it thinks fit in the circumstances of the case subject to the provisions of the Act and the rules framed thereunder and in accordance with the principles of natural justice. Under



Section 11(3), the Labour Court/Tribunal and other authorities mentioned therein have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit in respect of certain matters which include enforcing the attendance of any person and examining him on oath and compelling the production of documents and material objects.

45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before the Labour Court/Tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour Courts/Tribunals have the power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation. We reiterate that in order to avoid unnecessary delay and multiplicity of proceedings, the management has to seek leave of the court/tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. But this should not be understood as placing fetters on the powers of the court/tribunal requiring or directing parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice.”

44. Upon perusal of the aforementioned cases, it can be summarily stated that it is a settled position of law that the management is cast upon a duty as well as right to adduce any fresh evidence in order to substantiate the charges of misconduct leveled against the workman, but the same must be exercised by making a specific plea/request in the written statement itself.



45. The Tribunal may as the case may be grant the opportunity to lead any fresh evidence if the management seeks the same during the course of the proceeding and not after the conclusion of the findings. To the contrary, if no such opportunity is sought, nor there being any pleading to such effect, the Tribunal/Labour Court is not duty bound to *suo motu* call upon the management to adduce any additional evidence to substantiate the charges.

46. This Court further deems it imperative to deal with the second limb of the contentions advanced by the parties i.e., whether the domestic inquiry as conducted by the petitioner management in violation of principles of natural justice or not.

47. The term ‘principles of natural justice’ has been derived from expression ‘*jus natural*’ of the Roman Law. Although the principles of natural justice do not have the force of the law as they may or may not form part of the statute, but they are necessarily to be followed in order to do substantial justice. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

48. The Hon’ble Supreme Court *vide* its 5 Judge Constitutional Bench in ***A.K. Kraipak v. Union of India***, (1969) 2 SCC 262, for the first time observed that the principles of natural justice have to be observed in all judicial, quasi-judicial as well as administrative inquiries. The relevant



paragraph is reproduced herein below:

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala [Civil Appeal No. 990/68, decided on 15-7-1968] the rules of natural justice are not embodied rules. What particular rule of natural justice



should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.”

49. Upon perusal of the aforementioned judgment, it can be summarily stated that the foundation of the principles of natural justice is premised upon preventing miscarriage of justice and the same shall positively apply to administrative inquiries. An inquiry conducted in consonance with the said principles has far reaching effect in administrative inquiries than quasi-judicial inquiries. The Court adjudicating upon a matter shall minutely observe whether contravention of principles of natural justice affected the findings of the case.

50. The Hon'ble Court further observed that in the absence of express provisions in any statute dispensing with the observance of principles of natural justice, such principles have to be observed in all judicial, quasi-judicial as well as domestic administrative proceedings.

51. In this backdrop, this Court is of the view that the dismissal of the application filed by the petitioner management seeking leave of the learned Tribunal to prove the alleged misconduct of the respondent workman by way of adducing fresh evidence, the learned Tribunal has rightly placed reliance upon the ratio of ***Lakshmidiveamma Case (Supra)*** and concluded that the petitioner management has not pleaded that it had reserved the right to



adduce fresh evidence to substantiate the findings of the domestic inquiry neither in the written statement nor before the learned Tribunal concluded its findings on the said inquiry stating therein that the same was not proper since it violated the principles of natural justice by not furnishing to the respondent the documents relied upon by the Inquiry Officer.

52. The Court is also of the considered view that as per the settled position of law, if the domestic inquiry has not been conducted in consonance with the procedure prescribed under law or is in violation of principles of natural justice, the said inquiry would stand vitiated. Therefore, the learned Tribunal has correctly taken the view that the departmental inquiry conducted by the Inquiry Officer was illegal, unjust and contrary to the principles of natural justice.

53. With regard to the second limb of arguments, this Court is of the view that the learned Tribunal, while passing the impugned award has dealt with the aforesaid prayer in paragraph no. 14 of the impugned award which has already been quoted above, and rightly concluded that non-furnishing of documents to the respondent workman, relied upon by the Inquiry Officer during the course of inquiry, amounts to violation of principles of natural justice and hence, the domestic inquiry conducted by the petitioner Bank is bad in law and is liable to be set aside.

54. In light of the submissions advanced by the learned counsel for the parties and the settled position of law, this Court is not inclined to issue a writ of certiorari under its extraordinary writ jurisdiction as the findings of learned Tribunal are well reasoned and in consonance with the provision of



2024:DHC:1961



law, and hence, this Court may not interfere with the findings of the learned Tribunal.

55. In view of the foregoing discussions, this Court does not find any error or illegality in the impugned order and consequently, the instant petition being devoid of any merit stands dismissed.

56. Pending applications, if any, also stand dismissed.

57. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 12, 2024

dy/da/av

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DAMINI YADAV
Signing Date: 12.03.2024
19:08:35

W.P.(C) 4235/2017

Page 29 of 29