

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3262 of 2024

1. The Zonal Manager Central Bank of India, 3rd Floor, Maurya Lok Complex, Patna.
2. The Assistant General Manager, Regional Office, Central Bank of India, Alalpatti, PO- DMCH, District- Darbhanga.

... .. Petitioner/s

Versus

1. Bimal Chandra Mishra Son of Late Buchi Mishra R/o P.O. and P.S.- Ghoghardiha, District- Madhubani.
2. The Industrial Tribunal, Patna through its presiding Officer.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siddharth Harsh, Advocate
For the Respondent/s	:	Mr. Subodh Kumar Jha, Advocate
		Mr. Krishna Kumar, Advocate
		Mr. Pranav Kumar Jha, Advocate
		Mr. Chandra Mohan Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 10-02-2026

Heard learned counsel for the petitioners
(Management-Bank) and learned counsel for the respondents.

2. The present writ petition has been filed for the following reliefs:-

a) For issuance of an appropriate writ/order/direction setting aside the Award dt.20/07/2023 passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case no.01(C) of 2021 where under and whereby the tribunal has set aside the order of the Disciplinary Authority



dt.06/08/2015 dismissing the respondent and the order dt.01/02/2016 passed by the Appellate Authority confirming the order of Disciplinary Authority.

b) For staying the effect of the impugned Award dt.20/07/2023 passed by the Presiding Officer, Industrial Tribunal, Patna in Reference Case no.01(C) of 2021 during pendency of this writ application.

c) For any other relief or reliefs for which the petitioner would be found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioners (Management-Bank) submits that the petitioners are office bearers of a nationalized bank, namely, the Central Bank of India, a body corporate. He further submits that respondent No. 1 was an employee of the Central Bank of India and in the year 2011 he was posted as Head Cashier at Singhwara Branch under the Darbhanga Regional Office of the Central Bank of India. One customer of the bank deposited Rs. 36,000/- in cash in his CKCC account bearing A/c No. 2241733201 at the Singhwara Branch of the Central Bank of India. This amount was received by the private respondent in cash but the same was not credited to the said account of the depositor. It was further alleged that the same account holder came again on 14.06.2011 to deposit



Rs. 10,000/- in his CKCC account and raised his objection regarding non-deposit of Rs. 36,000/- in his account. On showing the deposit slip signed by the private respondent, the Branch made a credit entry of the said Rs. 36,000/- in the account of the customer on 14.06.2011. He further submits that the account of the customer was reversed by the private respondent on 06.08.2011 and thus the amount deposited by the customer was never handed over to the Bank. He further submits that the said customer submitted a written complaint on 24.07.2013 to the Deputy Regional Manager of the Bank. After receiving the complaint of the customer, the Bank, upon verifying the allegations, issued a letter to the private respondent to submit his explanation. The explanation submitted by the private respondent was not found satisfactory and, therefore, the Bank issued a charge memo on 03.11.2014 to the private respondent. He further submits that upon receiving the charge memo, the private respondent did not file any show cause against the said charge sheet. However, the private respondent submitted his reply on 08.06.2015 when the enquiry was already over. He was also provided an opportunity to defend himself and to lead his evidence. The Enquiry Officer initiated the inquiry and, after granting several dates and issuing notice to the



private respondent, in which the private respondent appeared, despite being given full opportunity, the private respondent did not produce any witness. However, the private respondent produced 15 documents. After going through the documents, the Enquiry Officer submitted his report on 18.06.2015, which was communicated to the Disciplinary Authority on 23.06.2015. He further submits that the Disciplinary Authority, after going through the findings of the Enquiry Officer and the submissions of the private respondent in defence of the enquiry report, passed an order on 06.08.2015 inflicting the punishment of dismissal upon the private respondent without notice under Clause 6(a) of the DAP for Workmen dated 10.04.2002. Counsel further submits that the private respondent preferred an appeal before the Appellate Authority-cum-Deputy General Manager of the Bank at the Zonal Office, Patna. Upon granting opportunity, the appellate order was passed against him and the order passed by the Disciplinary Authority was approved. Thereafter, the private respondent preferred CWJC No. 4747 of 2016 challenging the orders passed in the departmental proceedings. However, the said writ petition was dismissed on the ground that the private respondent had already filed an application before the Regional Labour Commissioner (Central), Patna for



conciliation. Counsel further submits that the conciliation failed before the Assistant Labour Commissioner and, in terms of letter dated 20.05.2019, he referred the dispute to the Government. Subsequently, the Central Government, in terms of letter dated 08.01.2021 issued by the Deputy Chief Labour Commissioner (Central), Patna, referred the dispute to the Industrial Tribunal, Patna. The Industrial Tribunal registered the case bearing Reference Case No. 01(C) of 2021. He further submits that before the Tribunal also the matter was fully contested, however, it was decided against the Management-Bank, against which the petitioners (Management-Bank) have preferred the present writ petition. Counsel further submits that at the time of passing of the order there has been a gross violation of the proviso to Section 11A of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) [hereinafter referred to as Act of 1947], which clearly provides that in case of dismissal of an employee, the Tribunal is not to take evidence afresh and has to decide the matter on the material already available on record. Counsel further submits that the Tribunal took evidence afresh and, without examining the evidence in its proper perspective, illegally set aside the order of the Disciplinary Authority and the Appellate Authority in terms of its Award dated 20.07.2023,



which was published in the Gazette on 23.09.2023.

4. Counsel has specifically pleaded that the Tribunal failed to consider the fact that the said amount of Rs. 36,000/- was never deposited by the private respondent in the Bank and the entry in the account of the said customer was superfluous, which was reversed and corrected on 06.08.2011 by the private respondent himself. Counsel further submits that, *prima facie*, on the ground that there has been a gross violation of the proviso to Section 11A of the Industrial Disputes Act, 1947 in the present case, the entire adjudication made by the Industrial Tribunal resulting in the Award is bad in law and fit to be set aside.

5. During his argument, counsel for the petitioners (Management-Bank) relied on the judgment passed by this Hon'ble Court in *LPA No. 35 of 1989 decided on 10.05.1990 (Indian Aluminium Co. Ltd Vs. Labour Court and Ors.)*, reported in *1990(2) PLJR 797*, equivalent to *MANU/BH/0079/1990*. Counsel further relied on another judgment in the case of *Neeta Kaplish Vs. Presiding Officer, Labour Court and Ors.*, reported in *AIR 1999 SC 698* and submits that paragraph 16 is very clear that after the introduction of Section 11A, the legal position as to the



jurisdiction of the Labour Court of Tribunal to itself decide the merits of charges on fresh evidence remained unaltered. Therefore, in light of the findings of the Hon'ble Supreme Court of India, also in the present case there is a violation of Section 11A of the Industrial Disputes Act, 1947, the findings of the Tribunal are absolutely bad in law and, therefore, the Award and the order passed by the Tribunal are liable to be set aside, which have been challenged by way of the present relief sought.

6. Learned counsel for the respondents, on the other hand, submits that in the present case due process of law has been followed. Counsel further submits that after the orders were passed by the Disciplinary Authority and the Appellate Authority, the private respondent preferred CWJC No. 4747 of 2016, which was disposed off on the ground that the private respondent had filed an application before the Regional Labour Commissioner for conciliation of the matter. He further submits that the said conciliation was conducted completely in accordance with the provisions of the Industrial Disputes Act, 1947. Counsel further submits that upon failure of conciliation, the matter was referred to the Central Government and the question of reference was framed. Thereafter, the matter was referred to the Industrial Tribunal and the case was registered as



Reference Case No. 01(C) of 2021 before the Industrial Tribunal, Patna. Counsel further submits that the Tribunal issued notice upon receiving the reference and directed the parties to file their pleadings with a view to decide the reference. Counsel further submits that upon receiving notice from the Industrial Tribunal, both parties appeared and filed their pleadings before the Tribunal and, for the purpose of adjudication, adduced their oral and documentary evidence. The learned Industrial Tribunal, Patna, upon appreciation of all the materials on record, decided the reference in favour of the private respondent. Counsel further submits that at no point of time did the Management-Bank raise any objection that evidence should not be taken and the matter be decided without taking evidence afresh. Counsel further submits that for the first time, after allowing the reference in favour of the private respondent and preparation of the Award, when the Management-Bank filed the present writ petition, this plea was taken by the Management-Bank that there was violation of the proviso to Section 11A of the Industrial Disputes Act, 1947.

7. Counsel further submits that the case on which the petitioners (Management-Bank) is relying, i.e., *Indian Aluminium Co. Ltd. (supra)*, does not create an absolute bar on



taking evidence at the level of the Labour Court. Counsel further submits that the said decision, rendered by a three-Judge Bench of this Hon'ble Court, is actually in favour of the respondents.

8. Counsel further submits that in paragraph 12 of the Industrial Tribunal, Patna in Reference Case No. 01(C) of 2021, dated 20.07.2023, a categorical finding of the Tribunal is recorded, in which it has been acknowledged that actually no physical loss of money accrued to the Bank. He further submits that the Tribunal has categorically observed that if defalcation of money had been made by the private respondent in the Bank in the year 2011, particularly on 30.05.2011 as alleged by the Management-Bank, then no FIR was lodged by the Management-Bank for the alleged irregularity committed by the respondent workman, for reasons best known to the petitioners (Management-Bank).

9. Counsel further submits that the charge was framed against the workman only in 2014, i.e., after a lapse of about three years. He further submits that in light of the finding of the Tribunal that there was no actual loss of money caused to the bank and the irregularity only pertained to an entry of money received from the customer in the cash balance register



despite the amount being deposited in the account, the Tribunal reached the reference and decided it in favour of the private respondent and prepared the Award.

10. Upon hearing the parties and perusing the records, it transpires to this Court that the dispute between the petitioners (Management-Bank) and the private respondent has been tested originally before the Disciplinary Authority, the Appellate Authority and the Labour Tribunal. This Court is of the view that concurrent findings of fact have been tested at three levels and, therefore, this Court restrains itself from entering into the findings of fact.

11. So far as the question of law, whether the proviso to Section 11A of the Industrial Disputes Act is in favour of the respondents or in favour of the petitioners (Management-Bank), is concerned, it is necessary to quote the relevant section, which states as follows:-

[11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the



adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

12. The judgment on which the petitioners (Management-Bank) relied was rendered by a three-Judge Bench of this Hon'ble Court, namely, *Indian Aluminium Co. Ltd. (supra)*. In this judgment, a question was decided by the three-Judge Bench of this Hon'ble Patna High Court, namely whether, in view of the proviso to Section 11A any fresh evidence can be adduced on the point of victimisation, unfair labour practice, and mala fide on the part of the management, and whether such evidence is permissible or not. In this regard,



after a detailed discussion, the findings of all three Hon'ble Judges were different.

13. The first finding was by the then Hon'ble Chief Justice G.G. Sohani, who observed that: *"I see no cogent reason to take, a view different from that taken in the decision in CWJC No. 58 of 1982 (R) on which reliance was placed by the learned single Judge. No case is, therefore, made out for interference with the order passed by the learned single Judge."*

14. The finding of the then Hon'ble Mr. Justice S. Roy, is as follows:-

11. I agree. However, I am adding few words of my own.

12. During the course of hearing of the writ petition, it was found necessary to notice the ordersheet of the Presiding Officer, Labour Court, Ranchi. The record was called for.

The management had in the written statement stated that the domestic enquiry held against respondent No. 2, the workman was fair and proper. Respondent No. 2 in his written statement stated that the domestic enquiry was vitiated as there has been violation of the principles of natural justice.



13. The management prayed for deciding the question of validity of the domestic enquiry as a preliminary issue. I may notice that no specific order or point in this regard was framed by the Labour Court. But from the order of the Labour Court dated 11th June 1983, that appeared to be the position. This fact is again confirmed by the order of the Labour Court dated 29th September 1983, wherein it was recorded that argument on the question of validity of the domestic enquiry begun. On 14th December 1983 order was passed and the first paragraph of that order reads as follows:

“This is an order on legality and validity of the domestic enquiry”.

It is thus clear that the parties led evidence only on the question of legality and validity of the domestic enquiry and along with that the order of dismissal of respondent No. 2 on the ground of victimisation and unfair labour practise was not taken up by the Labour Court.

14. It is not the case of the management that while trying the question of fairness of the domestic enquiry, the Presiding Officer called upon respondent No. 2 to adduce evidence on his assertion



that the order was bad as it was a case of victimisation or unfair labour practise. The allegation of respondent No. 2 about victimisation and unfair labour practise could not have been gone into by the enquiry officer. Respondent No. 2 was entitled to raise this question before the Labour Court. Since the Labour Court did not call upon the respondent No. 2 to lead evidence on the question of victimisation and unfair labour practise, while deciding the fairness of the domestic enquiry, respondent No. 2 was entitled to pray to the Labour Court to allow him to lead evidence on this point, when the domestic enquiry was held to be fair.

15. Dr. Pal in support of his contention that the Labour Court had no jurisdiction to allow respondent No. 2 to lead further evidence relied in Rohtas Industries Ltd. v. The Workmen and Ors. 1978 L.I.C. 949, and Cawnpur Sugar Works v. The State of Bihar MANU/BH/0371/1984: 1984 P.L.J.R. 813.

16. In Rohtas Industry (supra) the award of the Tribunal was challenged both by the management and the workmen, the former challenged on the ground that the Tribunal could not have ordered for reinstatement by holding that the charge had



not been proved, and the latter challenged the award on the ground that as the Labour Court held that charge had not been proved, it should have passed an order of reinstatement. The Tribunal held that the domestic enquiry was fair and the workmen accepted this position. Notwithstanding these facts, the Tribunal directed the parties to adduce fresh evidence with regard to the charge framed against the workman. One of the questions raised before the High Court was that once the Tribunal held the domestic enquiry to be fair whether it could have directed the parties to lead further evidence with regard to the charge framed against the workmen. Relying on Workmen v. Fire Stone Tyre Rubber Company India (P) Ltd. (supra) it was held that the Tribunal had no jurisdiction to admit fresh evidence on that point.

In Cawnpur Sugar Works (supra), the workmen, after holding the domestic enquiry, were dismissed from service. The Labour Court held that the domestic enquiry was fair and proper. The management thereafter had led further evidence before the Labour Court to prove the charge against the workmen. The Labour Court while giving the award confined itself to the records of the domestic enquiry and



rejected the prayer of the management to consider the fresh evidence brought by it before the Labour Court. The Division Bench upheld the order of the Labour Court by holding that as the domestic enquiry had been held to be fair and proper, there was no question of leading fresh/additional evidence to prove the charge. The principle laid down in both the cases, i.e. in Rohtas Industry and Cawnpur Sugar Works (supra) has no application to the facts of this case.

17. These are also some of the reasons for which I am of the opinion that the learned Single Judge whose judgment is subject matter of this appeal was correct.

15. It has been held that the judgment passed by the single Judge was to be followed.

16. Further, the finding of the third Hon'ble Judge, the then Hon'ble Mr. Justice S.B. Sinha, also concurred with the same conclusion that the decision made by the single Judge was to be followed. His finding has been recorded in paragraphs 53 to 55 as follows:-

53. In my opinion, there is not much conflict in the aforementioned decisions.

54. The Supreme Court in



Firestone's Case (supra) clearly laid-down that although in the event a preliminary issue with regard to the validity or legality of the domestic enquiry is decided against the management, it can lead fresh evidence in order to satisfy the Labour Court or the Tribunal that the concerned workman in fact has committed a misconduct and in that event, the workman will get an opportunity to lead evidence contra. It is thus evident that such evidence will form part of the 'materials on records'

55. While deciding such a preliminary issue, it will be open to the workman also to bring on record such materials as, in his opinion, may be necessary to show that the domestic enquiry held by the employer was not an enquiry in the eye of law i.e. not only the facts suggesting invalidity of the enquiry or violation of the principles of natural justice but the same would also include acts of victimization, mala fide or unfair of labour practice on the part of the management which, if proved, would vitiate the domestic enquiry itself. Similarly the management can also adduce fresh evidence to show that the Tribunal has no jurisdiction to decide the industrial dispute.



17. Upon a bare reading of the judgment of this Hon'ble Court, this Court comes to the conclusion that it has been held in that case that the proviso to Section 11A of the Industrial Disputes Act did not take away the right of employee to adduce evidence with regard to bias or victimisation, i.e., no bar in adducing evidence on the pleas of mala fide, victimisation or unfair labour practice on the part of the employer.

18. It also transpires to this Court that from the judgment of the Hon'ble Supreme Court of India on which the petitioners (Management-Bank) relied later on, namely *Neeta Kaplish (supra)*, paragraphs 14, 15, 16 and 19 state as follows:—

14. Provisions of the Industrial Disputes Act were thus amended on the recommendation of the International Labour Organization and Section 11A was introduced in the Act by the Parliament, wherein it was provided that the Tribunal had not only the power to set aside the order of dismissal and direct reinstatement of the workman, it had also the power to award lesser punishment. The Proviso to Section 11A, however, provided that the Tribunal would rely only on the material already on record and shall not take fresh evidence.

15. The provisions of Section 11A, specially the prohibition contained in



the Proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of Section 11A, this Court in Ritz Theatre (Pvt) Ltd. Delhi v. Its Workmen, MANU/SC/0265/1962: (1962)IILLJ498bSC, laid down that where the Management relied upon the domestic enquiry in defending its action, it would be the duty of the Tribunal to first consider the validity of the domestic enquiry and only when it came to the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

16. Even after the introduction of Section 11A, the legal position as to the jurisdiction of the Labour Court or Tribunal to itself decide the merits of charges on fresh evidence remained unaltered.

19. The Court further observed :

“We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue: whether the domestic enquiry has violated the principles of natural justice. When there



is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced, it will be for A the management to decide whether it will adduce any evidence before that Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible, in any proceeding to raise the issue.”

19. With a view to decide the issue, in the said case the decision to allow the management to lead fresh evidence was supported, but in the said case the management did not lead any fresh evidence on the merits. It is due to this reason that the Hon’ble Supreme Court of India remanded the matter to the Labour Court, directing the management to lead evidence afresh and then decide the matter within a fresh period of time. Therefore, upon perusal of both the judgments on which the petitioners (Management-Bank) relied in this case, this Court reaches the finding that neither the Hon’ble three-Judge Bench of this Court in the case of *Indian Aluminium Co. Ltd. (supra)* nor the Hon’ble Supreme Court of India judgment in *Neeta Kaplish (supra)* has created any bar in taking fresh evidence



under the proviso to Section 11A of the Industrial Disputes Act, 1947.

20. Upon discussion of the above position of law as well as the judgments referred to, this Court hereby decides that in the present case the question of reference is as follows:-

“Whether the action of the Management-Bank of the Central Bank of India in imposing the punishment of dismissal on the workman *Shri Bimal Chandra Mishra* is fair, legal, or justified? If not, what relief is the workman entitled to? This Court is of the firm view that the word testing the dismissal of the respondent from service as fair, legal, or justified implies the right of the employee to adduce evidence with regard to victimisation, mala fide conduct, or unfair labour practice on the part of the employer.”

21. On the question of the finding of fact, there is a conclusive finding in paragraph 12. Upon perusal of the judgment, this Court finds that only one witness was examined on behalf of the employee and one witness on behalf of the employer, otherwise, both parties relied on the documents of the Bank itself. Therefore, this Court is of the opinion that no fresh



material has been considered. All the materials relied upon are of the Bank, and for the purpose of producing these documents as exhibits, these two witnesses were examined and adduced evidence.

22. With this reason, this Court hereby dismisses the writ petition. The stay granted by this Court on 14.03.2024 is hereby vacated. The petitioners (Management-Bank) is directed to comply with the order of the Tribunal within 60 days from the date of production of this order, otherwise, the complaint case filed before the Civil Court, in light of Section 32 of Industrial Disputes Act, 1947 shall be proceeded with.

(Dr. Anshuman, J.)

Aman Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2026
Transmission Date	NA

