
(2015) 10 DEL CK 0227
In the Delhi High Court
Case No : W.P. (C) 9872/2006

Bank of India

APPELLANT

Vs

Harish Chander Sah

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 11-A, 17-B

Citation : (2015) 4 LLJ 698

Hon'ble Judges : Sunil Gaur, J.

Bench : Single Bench

Advocate : Jagat Arora, Advocate, for the Appellant; Atul T.N., Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Gaur, J.—The impugned Award of 7th March, 2006 directs reinstatement of respondent-workman with immediate effect while awarding punishment of stoppage of four increments with cumulative effect within one month from the publication of the Award.

2. The brief background of this case, as noticed in this petition, is that the respondent-workman was an employee in the subordinate cadre of petitioner-Bank and was last posted at Kamla Nagar Branch of the Bank. On 16th October, 1996, a charge-sheet was served upon respondent- workman alleging misuse of India Card facility extended to him by the petitioner- Bank and thus, had acted pre-judicially to the interest of petitioner-Bank in terms of Clause 19.5(j) of Bipartite Settlement of 19th October, 1996.

3. In the departmental proceedings, respondent-workman was found guilty of charge of spending Rs. 77,359.57 as against his sanctioned limit of Rs. 10,000/- during the period from 14th March, 1996 up to 16th July, 1996. The inquiry proceedings concluded with the infliction of penalty of dismissal from service with notice. Respondent-workman had filed an appeal against Disciplinary Authority's

order of 29th September, 1997 and the Appellate Authority afforded personal hearing to respondent- workman and thereafter had maintained the penalty awarded to respondent-workman. An industrial dispute was raised by respondent- workman and the reference made to the concerned Industrial Tribunal was as under:-

"Whether the terminating of Shri Harish Chander Sah, staff subordinate attached to Kamla Nagar Branch of Bank of India is justified? If not, what relief the concerned workman is entitled to and from what date?"

4. Upon completion of pleadings and recording of evidence, learned Tribunal vide impugned Award had found that respondent-workman had admitted charges in clear and categorical terms but had substituted the penalty of dismissal from service with the punishment of stoppage of four increments with cumulative effect. The findings of the learned Tribunal in the impugned Award are as under:-

"There is no rationale for inflicting such a severe punishment of dismissal. The workman has simply misused India Card and he was willing to pay back the entire amount in installments. The bank should have afforded him opportunity and sufficient time to pay back the entire amount overdrawn. He was given only 15 days time. It is not possible for an employee to deposit such a huge amount within 15 days. However, this employee has deposited sufficient amount at the time of admission of the charges. Punishment on the very face of it is excessive and disproportionate and not commensurate with the misconduct committed by this workman. He should have been placed in the category of other employees who have misused India Card and his four increments in view of more amount, excess drawn should have been imposed with cumulative effect and he should have been given time to deposit the entire amount with interest. It was necessary for the ends of justice and to avert the economic death of the workman."

5. At the hearing, learned counsel for petitioner-Bank had assailed the impugned Award by submitting that respondent-workman had misutilized funds of petitioner-Bank to the extent of Rs. 77,359.57 by misusing the India Card issued to him and the charge levelled against respondent-workman has been admitted by him. It was submitted that the learned Tribunal was unduly influenced by the instances of other employees i.e. Sanjeev Gulati and K.K. Verma whereas the case of said employees was on different footing and comparison between two unequals cannot be made.

6. Reliance was placed by petitioner's counsel upon Apex Court's decision in Indian Oil Corporation Ltd. and another Vs. Ashok Kumar Arora, to submit that the nature of misconduct is to be considered in awarding different punishments to different employees and the finding of arbitrariness is unwarranted, as the penalty of dismissal from service without notice was justified and appropriate. It was also submitted by learned counsel for petitioner-Bank that the punishment awarded by the disciplinary authority was not excessive one and learned Tribunal

has erred in interfering with the punishment awarded and so, impugned Award altering the punishment awarded deserves to be set aside. Lastly, it was submitted by learned counsel for petitioner that in compliance with the orders passed under Section 17-B of The Industrial Disputes Act, respondent-workman has already been paid a sum of Rs. 5,00,000/- odd from October, 2009 till August, 2015 and due to loss of confidence, reinstatement of respondent-workman is totally unjustified.

7. On behalf of respondent-workman, it was submitted by learned counsel that the issuance of charge-sheet itself for infringement of Clause 19.5(j) of Bipartite Settlement of 19th October, 1996 was uncalled for, as respondent-workman had not done anything pre-judicial to the interest of petitioner-Bank nor had caused any huge loss to the Bank and it was a simple case of overdraft facility. It was pointed out that respondent-workman had volunteered that he would pay back the over-drawn amount in installments and had prayed for reduction of rate of interest in view of his tight financial condition. Learned counsel for respondent-workman had drawn attention of this Court to Section 11-A of The Industrial Disputes Act to submit that the Tribunal has powers to dwell upon the quantum of punishment and to see whether it is proportionate to the misconduct. While relying upon decisions in *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, ; *T.A. Laxmanan Vs. I.A.A.I. and Another*, ; *Sadhu Ram Vs. Delhi Transport Corporation*, ; *Harbans Lal Vs. Jagmohan Saran, & Jasmer Singh Vs. State of Haryana*, it was submitted that this petition deserves to be dismissed and impugned Award ought to be implemented forthwith.

8. It is a matter of record that while entertaining this writ petition, operation of the impugned order was stayed on 28th July, 2006 and in terms of the order of 21st March, 2011 under Section 17-B of The Industrial Disputes Act, respondent-workman has received the minimum wages of approximately of Rs. 5,00,000/- odd from October, 2009 till August, 2015.

9. During the course of hearing, learned counsel for petitioner had drawn the attention of this Court to an order of 1st May, 1997 (Annexure P-16) to point out that the suspension of respondent-workman was not due to the misconduct in question but was due to stealthy removal of demand draft book, which was misused. The another reason for suspension put forth was the irregular attendance of respondent-workman.

10. Learned counsel for respondent-workman had pointed out that there was no adjudication of the above misconduct as mentioned in the Suspension Order (Annexure P-16). It is not in dispute that the Suspension Order (Annexure P-16) was not revoked, but according to learned counsel for respondent-workman, it had lapsed with the dismissal of respondent-workman on 29th September, 1997 due to misconduct, which is the subject matter of this petition.

11. Reliance was also placed upon Apex Court's decisions in *Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal*,

& Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, by learned counsel for petitioner to submit that the relief of reinstatement was substituted with the Award of compensation.

12. Learned counsel for respondent-workman pointed out that Apex Court in Mohan Lal (supra) had moulded the relief because the workman had raised the industrial dispute after six years of termination and in the instant case, there was no delay in raising the dispute. Attention of this Court was drawn to respondent-workman's reply of December, 1996 (Annexure P-4) to point out that respondent-workman had submitted that he is unable to deposit the whole amount and had paid few installments of paltry amounts and had sought forgiveness of his mistake and had sought to pay the outstanding amount in installments due to his weak economical condition. It was pointed out that impugned order gives liberty to petitioner to adjust the entire arrears i.e. remaining balance with interest on the amount overdrawn by respondent-Workman and the outstanding amount stands adjusted. Thus, dismissal of this petition was sought.

13. The submissions advanced by both the sides have been duly considered and the impugned Award, Appellate Order (Annexure P-7), material on record and the decisions cited have been perused and thereafter, it becomes evident that penalty of dismissal from service inflicted upon respondent-workman is indeed disproportionate to the misconduct of the respondent-workman. Clause 19.5(j) of Bipartite Settlement of 19th October, 1996 is attracted to cases of gross negligence likely to involve the bank in serious loss. Clause 19.7 of the Bipartite Agreement relates to minor misconduct and Sub-Clause (I) thereof reads as under:-

"(I). incurring debts to an extent considered by the management as excessive."

14. The misconduct attributed to respondent-workman is of overdrawing the sanctioned limit of the India Card issued to him. Quite evidently, Clause- 19.7 (I) and not 19.5 (j) of Bipartite Settlement of 19th October, 1996 would be attracted to the instant case. On the proportionality of the punishment awarded, the pertinent observations of the Apex Court in Chennai Metropolitan Water Supply and Sewerage Board and Others Vs. T.T. Murali Babu, are as under:-

"19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such

punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

15. Upon considering the case of respondent on the afore-noted parameters, this Court finds that punishment of stoppage of four increments with cumulative effect would be appropriate punishment. It is a matter of record that before penalty of dismissal from service could be inflicted upon respondent-workman, he was saddled with another misconduct, which was of grave nature i.e. of stealthy removal of demand draft book and of misuse of a few blank leaves out of the said demand draft book. On aforesaid account as well as on account of irregular attendance, before an inquiry could be conducted against respondent-workman, penalty of dismissal from service was inflicted upon him in respect of the misconduct in question.

16. After considering the decisions cited as well as the material on record, I find that impugned Award does not suffer from vice of arbitrariness and reliance placed upon Apex Court's decision in Indian Oil Corporation Ltd. (supra) is of no avail, as comparison with similar instances is quite appropriate. However, in view of subsequent misconduct of respondent-workman (though not proved), as noted in the order of 1st May, 1997 (Annexure P-16) as well as the fact that respondent-workman has only four years of service left, it would be in the fitness of things that instead of ordering reinstatement, respondent-workman is awarded compensation.

17. While keeping in mind the afore-noted subsequent misconduct and the fact that respondent-workman has just four years of service left, this Court is of the considered opinion that reinstatement of respondent-workman would be inappropriate. The Apex Court in Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, has reiterated as under:-

"From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations".

Consequential relief depends upon host of the factors. In the instant case, it would be indeed not in public interest to reinstate such an employee like respondent-workman. At this point of time, it would be futile to direct fresh inquiry on the charges as contemplated in the order of 1st May, 1997 (Annexure P-16).

18. So far as back wages are concerned, this Court finds that it has come in evidence that respondent-workman was not employed anywhere else and was dependent upon his father for survival and this has come in the cross-examination of respondent- workman. Since reinstatement of respondent-workman is considered inappropriate, therefore, question of back wages pales into insignificance.

19. Such a course is being adopted, as it would be inappropriate to foist an employee/workman like respondent upon petitioner-Bank. Practically, the reinstatement after 18 years is to be considered in light of the fact that respondent-Workman was a Helper with petitioner-Bank and was then drawing salary of Rs. 6,000/- odd and the length of service rendered by respondent-workman.

20. To grant of compensation in lieu of reinstatement, applying the dictum of Apex Court in Management of Aurofood Pvt. Ltd. Vs. S. Rajulu, & Bhavnagar Municipal Corporation Vs. Jadeja Govubha Chhanubha, to the instant case, this Court finds that the reasonable compensation payable to respondent-workman is Rs. 15,00,000/- (Rupees Fifteen Lac only) in all as full and final after adjusting the payments received under Section 17-B of The Industrial Disputes Act.

21. To the aforesaid extent, this petition is allowed while leaving the parties to bear their own costs.