

(2014) 12 DEL CK 0107

In the Delhi High Court

Case No : Writ Petition (Civil) No. 718/2003

Bank of India

APPELLANT

Vs

The Ld. Presiding Officer CGIT Delhi

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2015) 147 DRJ 524

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajat Arora, Advocate for the Appellant; Leena Tuteja, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This petition under Article 226 of the Constitution of India impugns the Award dated 3rd October, 2002 of the Industrial Tribunal-cum-Labour Court, New Delhi in I.D. No. 17/1994, answering the following reference:-

"Whether the action of the Management of Bank of India in dismissing Shri Satya Prakash Sharma, Agricultural Assistant from service w.e.f. 5th October, 1992 is justified? If not, what relief is the workman entitled to?"

in favour of the respondent no. 2 workman and setting aside the order dated 5th October, 1992 of the Disciplinary Authority of the petitioner Bank (of dismissal of the respondent no. 2 workman from the services of the petitioner Bank and of recovery of Rs. 4,000/- with interest from the respondent no. 2 workman) and directing the petitioner Bank to reinstate the respondent no. 2 workman in service with full back wages and all consequential benefits.

2. Notice of the petition was issued and vide ex parte ad interim order dated 28th January, 2003, the operation of the impugned Award stayed. Pleadings were completed. Vide order dated 11th May, 2004 on the application of the respondent no. 2 workman under Section 17B of the Industrial Disputes Act, 1947, the

petitioner Bank, without prejudice to its rights and contentions, agreed to pay a sum of Rs. 5,425/- per month to the respondent no. 2 workman w.e.f. 17th September, 2003. Though, the parties were referred to mediation but without any success. Rule was issued in the petition on 18th May, 2007. The respondent no. 2 workman filed CM No. 18042/2007 stating that the petitioner Bank, during the pendency of the industrial dispute, had come out with Pension Regulations, 1995, giving an option to all the employees of the Bank to avail benefit thereof; however since the service of the respondent no. 2 workman had been terminated, the respondent no. 2 workman was not informed thereof and thus could not exercise the option as required to be exercised under the said scheme and, seeking a direction to the petitioner Bank to allow the respondent no. 2 workman to exercise such option at that stage so as to become entitled to the benefits of the said scheme. This application is also pending consideration. On 15th March, 2010 it was informed that the respondent no. 2 workman attained the age of superannuation on 31st October, 2009 and hence the payment under Section 17B of the ID Act had been stopped since November, 2009. The counsel for the petitioner Bank and the counsel for the respondent no. 2 workman have been heard.

3. The respondent no. 2 workman Shri Satya Prakash Sharma working as Agricultural Assistant with the petitioner Bank was on 24th November, 1990 charge sheeted for depositing a cheque for Rs. 4,000/- received from New India Assurance Company towards insurance claim of a buffalo financed by the petitioner Bank to one Mr. Mool Chand Sharma, in the account of the said Mr. Mool Chand Sharma (borrower) instead of in the loan account of the said borrower with the petitioner Bank and having further, inspite of fully knowing that the amount so deposited could not be withdrawn, having obtained a blank signed withdrawal form from the said borrower and having filled up the said form and having withdrawn the said amount of Rs. 4,000/- from the account of the borrower; he was also charged with having received in cash Rs. 700/- from the borrower misrepresenting to the borrower that the said amount of Rs. 4,000/- and Rs. 700/- would be deposited in the loan account, and having never deposited the said amount or any part thereof in the loan account of the borrower with the petitioner Bank and having misappropriated the said sum.

4. A departmental inquiry was conducted and the Inquiry Officer (IO) in report dated 15th January, 1992 found the charges of, (i) the respondent no. 2 workman depositing the insurance claim in the savings bank account of the borrower with mala fide intentions; and, (ii) the respondent no. 2 workman having obtained a blank signed withdrawal form from the borrower and filling up the same and withdrawing the said sum of Rs. 4,000/- from the bank account of the borrower, to have been proved. However the IO found the charge, of the respondent no. 2 workman having received Rs. 700/- in cash from the borrower misrepresenting to the borrower that the said amount of Rs. 700/- will be deposited in his loan account, having not been proved. Accordingly it was reported that the charge of the respondent no. 2 workman having

misappropriated Rs. 4,000/- stood established.

5. The Disciplinary Authority of the petitioner Bank, after issuing notice to show cause to the respondent no. 2 workman, imposed the punishment of dismissal from service and of recovery of Rs. 4,000/- being the loss, attributable to the respondent no. 2 workman, suffered by the petitioner Bank together with interest thereon on the respondent no. 2 workman. The departmental appeal preferred by the petitioner Bank was dismissed vide order dated 28th April, 1993 and the punishment imposed on the respondent no. 2 workman confirmed. The respondent no. 2 workman raised an industrial dispute and on which the Central Government vide order dated 14th February, 1994 made the reference aforesaid.

6. The Central Government Industrial Tribunal - cum - Labour Court (Tribunal) in the impugned Award has found/observed/held, (i) that the respondent no. 2 workman had challenged the validity of the inquiry proceedings inter alia on the grounds, that the most important witnesses Shri Mool Chand Sharma (borrower), Shri Phool Chand and Shri Jaipal Singh were not produced by the Management before the IO to prove the charge and that there was inordinate delay in inquiry, amounting to violation of principles of natural justice; (ii) the petitioner Bank had defended its action contending, that due to absence of outside witnesses charge of misappropriation of Rs. 700/- was not proved; the inquiry was held throughout in the presence of the respondent no. 2 workman and the respondent no. 2 workman was afforded reasonable opportunity during the inquiry; that there was no illegality in conducting the inquiry and passing the order of dismissal of the respondent no. 2 workman from service; that the punishment of dismissal from service was justified; that even if there was any infirmity in the departmental inquiry, the petitioner Bank should be permitted to lead evidence before the Tribunal for just and fair decision; (iii) need for framing issues before the Tribunal was not felt as both parties in support of their case filed documentary evidence and stated that oral evidence need not be recorded and the question of fairness or otherwise of the departmental enquiry be decided on the basis of record produced by both the parties; hence no oral evidence was adduced by either parties before the Tribunal; (iv) that the counsel for the respondent no. 2 workman appearing as his representative had, while addressing oral arguments conceded that the departmental inquiry was held properly and there was no procedural error or violation of any principles of natural justice in conducting the inquiry; the only contention on behalf of the respondent no. 2 workman was that the findings of the IO were perverse and baseless because the most important witnesses i.e. Shri Mool Chand Sharma (borrower), Shri Phool Chand and Shri Jaipal Singh did not appear before the IO to give their evidence in support of their charges leveled against the respondent no. 2 workman and this fact had been overlooked and not considered, neither by the IO nor by the Disciplinary Authority or the Appellate Authority; that in the absence of substantial evidence to prove the charges, the punishment of dismissal should not have been awarded; (v) that the hearing before the Tribunal was thus confined to the aforesaid aspect and to the aspect of quantum of punishment awarded to the

respondent no. 2 workman; (vi) that though the petitioner Bank had mentioned the names of Shri Mool Chand Sharma, Shri Phool Chand and Shri Jaipal Singh supra in its list of witnesses before the IO but neither of the said persons appeared to give their evidence to prove the charges against the respondent no. 2 workman; (vii) it was the case of the petitioner Bank that the aforesaid witnesses had denied to appear and give evidence against the respondent no. 2 workman before IO as they were threatened by the respondent no. 2 workman; (viii) that the petitioner Bank, before the IO, had produced only formal witnesses whose evidence, being secondary, could not be said to be sufficient to prove the facts against the respondent no. 2 workman and to prove the charges leveled against the respondent no. 2 workman; (ix) that in the absence of substantial evidence to prove the factum of complaint, the charges could not be said to have been proved; (x) the matter remained in dark as to why the borrower and the other two witnesses did not appear; (xi) the petitioner Bank cannot take benefit of it merely by saying that the said witnesses did not appear due to certain threat given by the respondent no. 2 workman and that the said witnesses had been won over by the respondent no. 2 workman; (xii) the respondent no. 2 workman could not be held guilty on the basis of any presumption or assumption; (xiii) that the evidence on record of the IO was not sufficient to prove the charges against the respondent no. 2 workman; (xiv) this fact was not considered by the IO and which led to an error and perversity; (xv) since the aforesaid fact was overlooked by the IO, Disciplinary Authority as well as Appellate Authority, therefore their inquiries are also perverse; (xvi) that no case for granting the petitioner Bank a fresh opportunity to produce the said witnesses and prove the charges before the Tribunal also was made out as according to the petitioner Bank itself the said witnesses had refused to appear and give evidence against the respondent no. 2 workman; (xvii) the documentary evidence placed by the petitioner Bank in the form of complaint etc. received from the borrower was not substantive evidence of proof of guilt and only had corroborative value; (xviii) no one can be held guilty of charge, merely on the basis of a documentary/corroborative evidence only; (xix) hence there was no justification to allow further time and opportunity to the petitioner Bank before the Tribunal, to adduce any other evidence if any against the respondent no. 2 workman to prove the charges; (xx) that the order, of extreme penalty of dismissal from service, therefore could not be sustained; and, (xxi) that it was also the contention of the respondent no. 2 workman that there had been no financial loss to the petitioner Bank and axiomatically no justification to pass the order of dismissal from service and recovery of Rs. 4,000/- from the respondent no. 2 workman.

Accordingly, the Award of reinstatement of the respondent no. 2 workman in service with full back wages and consequential benefits.

7. On enquiry, it was informed that the respondent no. 2 workman had joined the employment of the petitioner Bank on 27th October, 1980 and that the time allowed for exercising the option under the Pension Scheme supra of the

petitioner Bank was of 60 days from September, 1995.

8. During the hearing it has further transpired that approximately a sum of Rs. 4 lacs has been paid by the petitioner Bank to the respondent no. 2 workman towards 17B wages till the time of the respondent no. 2 workman attained the age of superannuation as aforesaid.

9. In the aforesaid facts and circumstances, in my view, the decision of this writ petition is dependent upon the findings on the following issues:-

(a) what is the scope of interference by a Tribunal in the findings of the Departmental Inquiry Officer, Disciplinary Authority and the Appellate Authority, particularly when it is conceded that the departmental inquiry held was admittedly in accordance with the procedure prescribed therefor and the principals of natural justice and whether the Tribunal, in the present case was right in holding the findings of the IO/Disciplinary Authority/Appellate Authority to be perverse;

(b) whether the Tribunal was right in, inspite of the petitioner Bank seeking an opportunity for the same, refusing to grant an opportunity to the petitioner Bank to prove the misconduct with which the respondent no. 2 workman was charged, before the Tribunal;

(c) even if the charge is held to be proved, whether the punishment meted out is proportionate thereto; and,

(d) if the petition is to be dismissed, whether the respondent no. 2 workman is to be given an opportunity to avail of the pension scheme.

10. The counsel for the petitioner Bank has argued:-

A. that the Industrial Tribunal-cum-Labour Court erred in drawing adverse inference from the non-appearance of the borrower and the other two witnesses before the IO, losing sight of the fact that the customers of the petitioner Bank hesitate to so participate in the domestic inquiry. Reliance in this regard is placed on State Bank of India Vs. Tarun Kumar Banerjee and Others, ;

B. that the charges stood proved from the evidence led by the petitioner Bank before the IO;

C. on the contrary the respondent no. 2 workman failed to appear as a witness and give statement before the IO and only his defence representative made a statement at the time of arguments before the IO;

D. that the respondent no. 2 workman admitted his handwriting on the form filled up for withdrawal of the aforesaid sum of Rs. 4,000/- from the account of the borrower and admittedly the said amount was not deposited in the loan account of the borrower with the petitioner Bank and it thus stood proved that the respondent no. 2 workman had misappropriated the said sum of Rs. 4,000/-;

E. that on the aspect of proportionality of punishment, attention is invited to

Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain, ; and,

F. attention is invited to Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, laying down that a Bank Officer is required to exercise higher standards of honesty and integrity and the argument, of the Bank having suffered no loss from his action, is not available to a delinquent bank employee who acted without authority and that the Courts should not interfere in the punishment for such misconduct meted by the Disciplinary Authority.

11. The counsel for the respondent no. 2 workman has argued:-

I. that no inference of the respondent no. 2 workman having withdrawn the amount aforesaid of Rs. 4,000/- in cash from the account of the respondent no. 2 workman could be drawn from the admission by the respondent no. 2 workman of the form for withdrawing the said money being in his handwriting because it was the job of the respondent no. 2 workman to assist the uneducated agriculturists to whom the banking facilities were being made available;

II. that the money withdrawal form bears a token number and which is indicative of the borrower having himself withdrawn the amount of Rs. 4,000/- from the bank account, in as much as if the respondent no. 2 workman had withdrawn the said money, he, being an employee of the bank, no token would have been issued;

III. that while the amount of Rs. 4,000/- was withdrawn on 7th January, 1987, the complaint thereof by the borrower was made for the first time after more than two years on 6th September, 1989;

IV. that the borrower in his written complaint dated 6th September, 1989 did not even say that the respondent no. 2 workman had withdrawn the said amount of Rs. 4,000/- from his account but claimed to have given the said amount of Rs. 4,000/- in cash to the respondent no. 2 workman;

V. that though the respondent no. 2 workman was charged with having deposited the cheque for Rs. 4,000/- received towards insurance claim in the saving account of the borrower instead in the account of the borrower with the bank, "with mala fide intentions", but no mala fide intention has been proved;

VI. that the borrower, prior to the first complaint dated 6th September, 1989, had on 27th November, 1988 acknowledged the amount outstanding in his loan account; had the borrower intended Rs. 4,000/- and Rs. 700/- to have been deposited in his loan account, according to the borrower the same would have stood squared up and the borrower would not have acknowledged the liability on 27th November, 1988; and,

VII. that even if all the charges against the respondent no. 2 workman are proved, the petitioner Bank has not suffered any loss in as much as the borrower has squared the loan account in installments culminating in the year 1994.

12. I had during the hearing asked both the counsels as to the scope of inference by the Tribunal in the factual findings arrived at by the IO and the Disciplinary Authority. Both counsels had stated that they would, by the end of the day, give copies of the judgments on the said aspect. However no copies of the judgments have been supplied. The counsel for the respondent no. 2 workman, during the hearing had however invited attention to Section 11A of the ID Act in this regard.

13. I have perused the records and considered the contentions of the counsels.

14. In my view, once it was conceded by the respondent no. 2 workman that the departmental inquiry was conducted in accordance with the procedure prescribed therefor and in compliance of the principles of natural justice and in the absence of any plea of want of good faith or of victimization, the only ground on which the Tribunal could, as per Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, , have interfered in the factual findings therein was, if it could be said that the conclusions reached/arrived at, on the basis of material on record, could not have been arrived/reached at by any reasonably thinking person. Else, the Tribunal does not sit in appeal over the findings arrived at in departmental disciplinary proceedings in as much as the management of a concern has power to direct its own internal administration and discipline and the Tribunal cannot substitute its own judgment for that of the management. Only if it could be said so, could it be said that the findings were perverse. As far as the reference by the counsel for the respondent no. 2 workman to Section 11A of the ID Act is concerned, the reliance thereon, in my view, in this context, is misconceived. All that Section 11A does is to vest the Tribunal with power, in cases where punishment or discharge or dismissal of a workman has been meted out, to even inspite of concluding that the prescribed procedure before meting out such a punishment has been followed and the conclusions of guilt are not perverse, still, if of the view that the punishment or discharge or dismissal is not justified, modify the said punishment. In the absence of Section 11A, the Tribunal would have no such jurisdiction in as much as the settled position in law as held in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, , U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, and Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., is that if the departmental proceedings held are in accordance with law then the Tribunal has no jurisdiction to interfere in the quantum of punishment. The Tribunal, in the present case, having interfered with the decision of the IO/ Disciplinary Authority, the question of application of Section 11A did not arise.

15. I will therefore proceed to consider, whether the conclusions reached by the IO, Disciplinary Authority and Appellate Authority of the petitioner Bank, of the charge of the respondent no. 2 workman having with mala fide intention deposited the cheque towards insurance claim in the saving account instead of in the loan account of the borrower and of having got the withdrawal form signed in blank from the borrower and having withdrawn the amount of Rs. 4,000/-

therefrom and having misappropriated the same having stood proved, can be said to be perverse.

16. The only reason given by the Tribunal for holding the conclusion reached by the IO/Disciplinary Authority being perverse, is of the said conclusion having been reached without the borrower and the other two witnesses having deposed before the IO. The Tribunal otherwise has not examined the other material available and has not held that the said other material was not sufficient to reach such a conclusion. The Tribunal has presumed that it is only the borrower and the other two witnesses who could have proved the said charge. I may record that the other two witnesses are the persons named by the borrower in his complaint, in whose presence according to the borrower the respondent no. 2 workman had so made him sign the blank withdrawal form.

17. The Supreme Court in Tarun Kumar Banerjee supra has held that a customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to a proper Banker customer relationship and, therefore, would not be in the interest of the Bank. It was further held that the Tribunal in that case could not have placed reliance on such irrelevant circumstance to hold that the conclusion reached departmentally in the disciplinary proceedings were perverse. It was further held that when sufficient evidence is produced to conclude one way or the other, the evidence not produced will not be of any significance unless the evidence withheld would have tilted the evidence adduced in the course of the domestic inquiry.

18. I find that even in cases relating to public transport corporations, it has been held in State of Haryana and Another Vs. Rattan Singh, , Sultan Singh Vs. Delhi Transport Corporation , Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, , Delhi Transport Corporation Vs. N.L. Kakkar Presiding Officer, Industrial Tribunal No. 1 and Karan Singh, Conductor, and Delhi Transport Corporation Vs. Rajbir Singh, that non-production of the commuters/passengers traveling on the buses and whose presence cannot be conveniently secured, is not fatal to prove the charge.

19. I have during the hearing, in this regard, enquired from the counsel for the respondent no. 2 workman whether it was/is the case of the respondent no. 2 workman that the disciplinary proceedings against him were motivated by any reason. The answer is in the negative. As an afterthought however, attention is invited to the page 77 of the paper book, being the reply of Management Witness-3 in the course of cross examination by the counsel for the respondent no. 2 workman before the IO, where the said witness has stated that the addition in the document shown to him was at the instance of Mr. Anil Aggarwal official of the petitioner Bank (who was acting as the Presenting Officer) and on the basis thereof it was contended that the same proved that the charge against the respondent no. 2 workman had been cooked up. However the counsel for the respondent no. 2 workman is unable to show even the document referred to or the effect thereof (I may at this stage record that though the petition has been

pending in this Court for more than 11 years but the Tribunal's record has not been requisitioned as yet; neither counsel also at any stage or even today made any such request; after hearing the counsels, it is not deemed expedient to at this stage derail the decision by requisitioning the record).

20. I have otherwise perused the record of the inquiry proceedings. The respondent no. 2 workman is found to have not filed any reply to the charge sheet and to have opted straightway to cross examine the witnesses of the petitioner Bank. The petitioner Bank produced its Investigative Officer as the first witness who deposed that, the borrower had confirmed to having made the complaint in writing against the respondent no. 2 workman; the borrower having also named the other two witnesses in whose presence he had dealt with the respondent no. 2 workman; the said other two witnesses having also confirmed to him the events complained of by the borrower; that the respondent no. 2 workman inspite of opportunity having chosen not to give any explanation in writing on the complaint to the Investigating Officer also; the respondent no. 2 workman having admitted to the withdrawal form/voucher having been filled up in his handwriting; the records of the concerned branch of the bank not containing any other voucher filled up by the respondent no. 2 workman in the past on behalf of the subject or any other borrower and he having submitted a report to the bank that there was sufficient evidence in the complaint to prove the allegations against the respondent no. 2 workman. The said witness also deposed having concluded from the investigation that the respondent no. 2 workman credited the amount of the insurance claim to the savings bank account of the borrower and having filled the subsequent withdrawal slip for the same amount with a motive and with the knowledge that the amount withdrawn by him should not have been withdrawn and that the said withdrawal would cause financial loss to the borrower and the bank. The respondent no. 2 workman in his cross examination of the said witness did not controvert the statement in examination-in-chief that the respondent no. 2 workman was not found to have filled up the withdrawal form/voucher in the past of the borrower or any other borrower.

21. The second witness produced by the petitioner Bank before the IO was Mr. K.C. Nigam, Staff Officer of the concerned branch who deposed, that the pay-in-slip of the cheque towards insurance claim deposited in the saving bank account of the borrower and the withdrawal form/voucher were in the handwriting of the respondent no. 2 workman. The respondent no. 2 workman in cross examination of the said witness did not put to the said witness that the deposit slip/withdrawal form/voucher was bearing a token number and which was indicative of the borrower having withdrawn the money himself, as has been argued today and for which reason no cognizance of the said argument can be taken.

22. The third witness examined by the petitioner Bank before the IO was the official from the New India Insurance Company Ltd. who deposed having issued the cheque towards the insurance claim. The part of his cross examination at

page 77 of the paper book to which the counsel for the respondent no. 2 workman had referred in her arguments, relates to the cheque having been made out in the name of the borrower but addition of "to the account of Bank of India" having been made subsequently. In my opinion nothing turns on the same as judicial notice can be taken of the fact that the cheques towards insurance claim against the mortgaged/hypothecated property, though in the name of the insured, are generally issued to the account of the financing bank.

23. The fourth witness examined by the petitioner Bank before the IO was also an official of the concerned branch who deposed having received the complaint from the borrower. In his cross examination by the respondent no. 2 workman, it has come out that the borrower had informed him that he did not make the complaint earlier, being under the impression that the amount of Rs. 4,700/- aforesaid had been credited to his account and that it was only after he received notice from the petitioner Bank of the outstanding loan that he realized that the amount had not been so deposited and hence made the complaint.

24. A perusal of the proceedings of the IO also shows the petitioner Bank at that stage only had taken the stand that the borrower and his other two witnesses were refusing to depose, owing to threats meted out by the respondent no. 2 workman.

25. The Tribunal also lost sight of the fact that the respondent no. 2 workman also could have produced the borrower had there in fact been no complaint and/or the same was merely being used by the petitioner Bank to target the respondent no. 2 workman. The respondent no. 2 workman who was the human face of the petitioner Bank vis-a-vis the borrower and the respondent no. 2 workman would have known the borrower sufficiently well to produce him in evidence as his witness if indeed the borrower had no grievance with the respondent no. 2 workman.

26. On perusal of the record of the IO, it is further found that the respondent no. 2 workman, inspite of opportunity, did not chose to depose and on the contrary his defence representative made a statement before the IO, generally denying the charge and the evidence of the petitioner Bank. However the said statement is of no avail or weightage. The respondent No. 2 workman clearly avoided being subjected to cross examination or even denying on oath or himself, the charge against him.

27. The aforesaid narrative would show that there was indeed sufficient material before the IO, Disciplinary Authority and the Appellate Authority to conclude that the charges had been proved and it cannot be said that their findings in this regard are perverse. Even the defence representative in his statement before the IO could not name any other customer on whose behalf the respondent No. 2 workman may have in the past filled the pay-in-slips or the withdrawal form. The view taken by the IO/Disciplinary Authority was a plausible view. It cannot be lost sight of that departmental proceedings are guided by common sense and

pragmatic approach and are not governed by legal technicalities. The Supreme Court, in *B.C. Chaturvedi Vs. Union of India and others*, held that when departmental findings are based on some evidence, the authority entrusted with power to hold enquiry has jurisdiction to reach such finding/conclusion and the Tribunal ought not to re-appreciate evidence on the threshold of technical rules of The Indian Evidence Act, 1872 and ought not to arrive at its own independent findings on the evidence. It was reiterated that the Disciplinary Authority is the sole Judge of facts and adequacy or reliability of evidence cannot be canvassed before the Tribunal. In our opinion, there was sufficient evidence before the IO/ Disciplinary Authority to reach the conclusion of guilt of the respondent No. 2 workman, specifically in the light of his failing to himself, in writing or on oath deny the charges. Thus the Tribunal was clearly wrong in setting aside the disciplinary proceedings.

28. I am unable to hold that once the aforesaid charges are found to be fulfilled, the punishment meted out of dismissal is not justified. The judgment *supra* in *P.C. Kakkar* and in *Damoh Panna Sagar Rural Regional Bank* apply on all fours. It has similarly been held in *Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, and R.K. Rohilla (deceased) through L.Rs. Vs. Syndicate Bank*, that an employer cannot be compelled to keep a dishonest employee on an employee in which the employer has lost faith.

29. I am also of the view that though in terms of the above there is no need to decide the second of the aforesaid issues but for the sake of completeness it is deemed appropriate to deal therewith also. In my view the Tribunal was not justified in, inspite of the petitioner Bank clearly asking for an opportunity, denying an opportunity to the petitioner Bank to prove the misconduct, if found to be not proved in the departmental proceedings, before the Industrial Tribunal. The reason given by the Tribunal for denying such opportunity to the petitioner Bank is found to be erroneous. Merely because the petitioner Bank had failed to produce the borrower and the other two witnesses in evidence during the inquiry could not have led to the presumption that the petitioner Bank would be unable to produce them before the Industrial Tribunal-cum-Labour Court also. While the petitioner Bank could not have in the departmental inquiry compelled the presence of the borrower and his witnesses, it could have been done so in the proceedings before the Industrial Tribunal-cum-Labour Court. Reference in this regard can be made to *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, .

30. The petition therefore succeeds. The Award dated 3rd October, 2002 of the Industrial Tribunal-cum-Labour Court is set aside and the reference made for adjudication is decided in favour of the petitioner Bank.

31. In view of the aforesaid there is no need to decide the claim of the respondent no. 2 workman being entitled to exercise the option for pension, in as much as it is the admitted position that the respondent no. 2 workman if dismissed from service, was not entitled to such an option.

I refrain from imposing any costs on the respondent no. 2 workman.