

(2011) 10 RAJ CK 0017
In the Rajasthan High Court
Case No : CWP No. 1285 of 1998

Canara Bank

APPELLANT

Vs

Ram Ratan and Another

RESPONDENT

Date of Decision : 11-10-2011

Acts Referred:

Canara Bank Service Code — Article 2, 3
Industrial Disputes Act, 1947 — Section 11(A), 17(B)

Citation : (2012) 132 FLR 372 : (2012) 3 LLJ 575 : (2012) LLR 143 : (2012) 2 RLW 1042

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Rastogi, J.—Instant petition is directed against Award dt.02/04/1996 whereby Industrial Tribunal, Jaipur while upholding domestic inquiry to be fair & proper and the charges stood proved against workman, but in exercise of power u/s 11A of Industrial Disputes Act, 1947 ("ID Act") considering punishment of dismissal to be disproportionate, converted the penalty to the stoppage of four grade increments with cumulative effect, with reinstatement without back-wages for intervening period.

2. Ram Ratan (respondent-workman) on being selected by Banking Service Recruitment Board was appointed as Probationary Clerk and joined Canara Bank, Jaipur on 28/10/1982. However, charge sheet was issued by Canara Bank while placing petitioner under suspension vide order dt.09/04/1986, for allegations of having committed misconduct within the meaning of Chapter 1 Art. 2 & 3 of Canara Bank Service Code.

3. However, the charge was that in the application submitted pursuant to advertisement issued by Banking Service Recruitment Board, respondent-workman filled up form mentioning details of previous employment as "No"; and left the Column of Work Experience "Blank"; and similarly, in Cols.12 & 13 of

Declaration Form, regarding previous work experience/previous employer, he mentioned "No".

4. However, it came to the notice of Canara Bank that the workman had joined service in Narnaul Central Co-operative Consumer's Store Ltd ("Society") Narnaul as Salesman in Cloth Section on 5/6/1975 where he was placed under suspension for misappropriation of Rs. 16,772 on 18/06/1979 for which charge sheet was issued on 27/5/1980 and after inquiry, he was held guilty and his services were terminated by the Society vide order dt. 11/03/1983 and this vital information regarding earlier employment and his conduct & character regarding misappropriation of money resulting in termination from service by the Society having deliberately concealed while applying for & joining Bank service, that was considered to be gross misconduct under Canara Bank Service Code.

5. After holding domestic inquiry, the charge was found proved against the workman and the disciplinary authority after accepting the finding of guilt recorded by inquiry officer held him guilty and inflicted penalty of dismissal from service vide order dt. 31/05/1987, against which departmental appeal was preferred, that came to be dismissed assigning detailed reasons vide order dt. 27/06/1988.

6. On a dispute being raised by workman, a Reference was made by appropriate Government for adjudication vide notification dt. 29/11/1988. After claim application, written statement was filed & the evidence led by respective parties, learned Industrial Tribunal thereafter came to the conclusion that inquiry was fair & proper and there was no violation of principles of natural justice and finally upheld the action initiated against the workman.

7. However, since the workman confined his submission only to the quantum of punishment, accordingly, the learned Tribunal considered proportionality of punishment inflicted by the Bank, holding it to be highly disproportionate to the proved misconduct; converted penalty of dismissal into stoppage of four annual grade increments with cumulative effect in exercise of powers u/s 11A of ID Act and ordered for his reinstatement without back-wages.

8. Counsel for petitioner Bank submits that if punishment inflicted by the disciplinary authority was based on proved charges and order of punishment was supported on a finding based on substantial misdemeanor, for which penalty was inflicted, discretion exercised by the Tribunal U/s 11A of ID Act in the facts of instant case was Wholly arbitrary and has not been exercised within judicial restraints under the law.

9. Par contra, Counsel for respondent-workman while supporting the Award, submits that since cogent reasons have been assigned while exercising powers u/s 11A, the Award impugned does not call for interference.

10. It is relevant to record that initially notices were issued of writ petition on 09/03/1998 and after hearing the parties, while admitting the petition, execution

of the Award impugned was stayed vide order dt.09/12/1998 till disposal of the petition with further direction that workman shall be paid last wages drawn in terms of S.17B of ID Act.

11. This Court has considered rival contentions of the parties and with their assistance, examined material on record. As regards fairness of Inquiry and the procedure adopted while holding the charges proved was not questioned before the Tribunal and It is not the case of the workman that In the process of Inquiry there was either violation of principles of natural Justice or fair opportunity of hearing was not afforded to him. However, the question remains confined to examine the proportionality of punishment Inflicted upon the workman.

12. There cannot be any dispute that after Introduction of section 11A of ID Act, certain amount of discretion is vested with Labour Court/Industrial Tribunal in Interfering with quantum of punishment awarded by employer where the workman has been found guilty of misconduct; but the discretion vested u/s 11A has to be Judiciously exercised by the Tribunal and the area of discretion has been very well defined by a catena of judgments of Apex Court and in case of the workman being held guilty of misconduct on proved charges, it can be exercised based on existence of certain facts only on the punishment Inflicted by employer being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court and there are cogent reasons to support that the punishment inflicted was highly disproportionate to the gravity of proved misconduct.

13. Though u/s 11A of ID Act, the Tribunal has powers to reduce quantum of punishment but mere possession of powers is not sufficient and it has to be exercised within the parameters of law. Scope of section 11A of ID Act has been examined by Apex Court in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., and it has been observed ad Infra:

23. Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., is a case wherein the misconduct against the delinquent was "verbal abuse". This Court held:

It Is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised u/s 11A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise

the power u/s 11-A of the Act and reduce the punishment. As noticed herein above at least in two of the cases cited before us i.e. Orissa Cement Ltd. (1960 (I) LLJ 518 (SC) and New Shorrock Mills, (1996 (6) SCC 690) this Court held:

Punishment of dismissal for using of abusive language cannot be held to be disproportionate.

In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice in presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above.

14. In Karnataka SRTC v. AT. Mane, (2006) 3 SCC 254)

Apex Court held *ad infra*:

13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

15. In Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen, the Apex Court observed *ad infra*:

It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting u/s 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce sentence of dismissal.

16. In L/C of India v. ft. Dhandapani, 2006 (13) SCC 613, Apex Court observed *ad infra*:

7. It is not necessary to go into in detail regarding the power exercisable u/s 11-A of the Act. The power under said Section 11A has to be exercised judiciously

and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management u/s 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient.

17. Taking note of consistent view of Apex Court expressed while examining scope of Section 11A, it is trite "hat there cannot be any dispute that power U/s 11-A has to be exercised judiciously by the Tribunal within parameters of law and interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by employer Is highly disproportionate to the degree of guilt of the workman; but once based on evidence if disciplinary authority comes to a particular conclusion normally it is not open to a Tribunal / judicial forums to substitute their subjective opinion In place of the one arrived at by the disciplinary authority unless the Tribunal records cogent reasons In support of its finding and the decision of the employer can be interfered with only when it is satisfied that punishment imposed by the employer is wholly & shockingly disproportionate to the degree of guilty of the workman and to support its conclusion the Industrial Tribunal or the Labour Court, as the case may he has to give cogent reasons.

18. Apex Court time and again observed that power have So be exorcised judiciously and mere use of words "disproportionate" or "grossly disproportion(sic)ate" by itself will not be sufficient. Though the Tribunal his power u/s 11A to reduce quantum of punishment, but it has to be done within parameters of law.

19. In instant case, while respondent workman submitted his application to participate in process of selection initiated by Banking Service Recruitment Board, there was a Column where one has to specify information relating to work, experience, and details of previous/present employer but in that Column, indisputably the workman had written - "No" meaning thereby he had not worked earlier.

20. It is relevant to quote the charges imputed against the workman ad infra:

D. Charges: The charges against the employees in the above referred charge sheet reads as under:

You had applied for recruitment as a probationary clerk against an advertisement made by BANKING SERVICE RECRUITMENT BOARD, WESTERN GROUP, BARODA. You had filled up the bio-data form for this purpose and submitted the same to the said BANKING SERVICE RECRUITMENT BOARD.

Column 14 of the bio-data-cum-application form related to the work experience

and you were required to give details of all your previous/present employments. Under this column you had written "No" meaning thereby that you had not worked in any other organisation prior to 19.12.1981 when you submitted the said bio-data form. Consequent upon your selection, you were appointed In the Bank at Jaipur as probationary clerk and you joined on 28.10.1982 at Jaipur branch.

It has come to light that before joining the Bank you were working as a salesman In Narnaul Central Co-operative consumers store ltd. You had joined the above mentioned store as a salesman in the cloth section on 5.6.1975. While you were working there you had misappropriated a sum of Rs. 16772. You were suspended from the services of the said Co-operative store, vide order No. 6643-47 dated 18.6.79.

A charge sheet No. 30474 dated 27.5.80 was also issued to you. You were terminated from the services vide order No. CONFED/ESTT/6177/ dated 9.3.83. This order was communicated to you vide their letter No. 1864/03 dated 11.3.83.

You had deliberately and with ulterior motives of securing a job in the bank concealed this vital information about your earlier employment and about your involvement in the misappropriation and consequent termination from the services.

Your above action in not revealing the details of your previous employment, as well as your subsequent termination from the above mentioned store either in the bio-data-cum-application form or subsequently in any other manner at the time of joining the bank. You have committed gross misconduct within the Canara Bank service code.

Your above action being prejudicial to the interest of the bank you have committed gross misconduct within the meaning of Chapter XI Regulation 3 clause (m) of Canara Bank service code.

21. The charges imputed disclose that while the workman was earlier employed in Narnaul Central Co-operative Consumer's Store Ltd ("Society") Narnaul as Salesman in Cloth Section, he was served with charge sheet for misappropriation of money of Rs. 16772 and after being held guilty, his services were terminated and this vital information of he being employed as Salesman and having been terminated from service because of proved misconduct was concealed by him while applying for Bank job despite there being a requirement to have disclosed it in the application Form and Bio-data submitted while joining Bank service.

It is relevant to record that letter dt. 14/02/1986 having been sent by Narnaul Central Co-operative Consumer's Store Ltd to the Canara Bank produced as Ex.M2(c) indicates that for misappropriation of Rs. 16772 the workman was charge-sheeted and on being found guilty, his services were terminated on 08/03/1983; however, it was further informed that full misappropriated amount was recovered from the workman and no police complaint was lodged. But that

vital information indisputably was concealed while applying for Bank job and it was a gross misconduct committed under Canara Bank Service Code for which he was found to be guilty and penalty of removal from service was inflicted upon him. It appears from the Award impugned that the Tribunal has observed that there was no charge of misappropriation of funds against the workman and It was on account of error/ mistake In books of stock register and it was not a deliberate action of the workman but what has been recorded by the Tribunal is factually incorrect and is not supported by any material on record. On the contrary, there was a specific allegation against the workman regarding misappropriation of money committed while working in co-operative Store as Salesman, that was the reason, why his services were terminated by earlier employer.

22. Judgment in Raj. State Road Corporation v. Bhagyomal and Ors., 1994 Suppl (1) SCC 573 relied upon by learned Tribunal while interfering with quantum of punishment has no application in the facts and circumstances of the instant case for the reason that in the cited case, the Tribunal while reducing the punishment & reinstating the workman had denied back-wages but the High Court interfered and directed the RSRTC to grant him back-wages, as well, which was considered by the Apex Court to be self-contradictory and the order of the High Court to the extent of allowing back-wages, was interfered with and the Apex Court set aside the order of back-wages.

23. However, in a case of misappropriation of funds where there is financial loss, it was observed by Apex Court in Divisional Controller, N.E.K.R.T.C. Vs. H. Amaresh, that if one is found guilty of misappropriation, the Court should be reluctant to reduce the punishment on misplaced sympathy for a workman, and observed ad infra:

In the instant case, the misappropriation of the funds by the delinquent employee was only Rs. 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is Impermissible In law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there Is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the Judicial forums and Interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation v. B.S. Hullikatti, 2001 LLR 259 (SC) : (2001) 2 SCC 574) was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and

the learned Judges of the High Court misdirected them selves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum.

and further considered In later judgment In U.P. State Road Transport Corporation Vs. Vinod Kumar, and the Interference by Court In the quantum of punishment In such like case where there is a charge of misappropriation of funds and found to be proved was not considered to be appropriate.

24. However, misappropriation of funds might not have been committed by the instant workman while being In service of the Bank but he was charge-sheeted for misappropriation of funds by earlier employer and on being held guilty, his services were terminated but this vital Information has been materially concealed by him while applying for Job of the Bank and non disclosure of material Information regarding misappropriation of funds In course of earlier employment was taken note of petitioner employer while Inflicting penalty of dismissal from service and It was the gross misconduct which the workman committed while application was submitted at the stage of participation In the process of selection and at the stage of appointment In the Banking service.

25. This Court would further like to record that there Is no place of generosity or misplaced sympathy on the part of judicial forums and Interference with quantum of punishment Is Impermissible. In Banking service, If there Is an allegation of deliberate attempt to withhold vital Information; that too regarding proved misconduct of misappropriation of money being a financial Institution, that has to be taken seriously and this Court does not find any error In the decision making process of the disciplinary authority (Canara Bank) In Inflicting punishment of dismissal from service. Misappropriation might have been committed in earlier employment but once that has been found proved after regular inquiry and this vital Information which the workman indisputably concealed while applying for Bank Job, was necessarily to be disclosed by incumbent in the Form at Col. 14, In the opinion of this Court, the penalty of dismissal from service inflicted upon workman by the disciplinary authority was in no manner disproportionate to the misconduct found proved against him and exercise of power u/s 11A by the learned Tribunal in the facts of instant case cannot be approved by this Court.

26. Consequently, writ petition succeeds and is hereby showed. Award dt. 2/4/1996 Is hereby quashed and set aside. No costs.