
(2009) 01 CAL CK 0047
In the Calcutta High Court
Case No : C.O. No. 3403 of 2008

Central Bank of India and Another	Vs	APPELLANT
Sri Amiya Kumar Sahu and Another		RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 01 CAL CK 0047

Hon'ble Judges : Rudrendra Nath Banerjee, J

Bench : Single Bench

Advocate : M.R. Sarbadhikary, for the Appellant; Harish Tandon, Abhijit Roy and Tanmoy Kr. Dey for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Rudrendra Nath Banerjee, J.—This revisional application under Article 227 of the Constitution of India has been filed by the Central Bank of India and Ors. against Sri Amiya Kumar Sahu and Ors. challenging the award dated 19.06.2008 of the Central Government Industrial Tribunal at Calcutta, passed in reference No. 9 of 2005, thereby setting aside the decision of the Disciplinary Authority and Appellate Authority of the said bank and re-instating the said employee/workman in service with full back wages.

2. The opposite party No. 1, Amiya Kumar Sahu, was appointed on 20.01.1982, as peon under the said Bank at Baranagar. The said workman allegedly forged the signatures of Smt. Ratna Sarkar, a customer of Baranagar Branch, in withdrawal slips dated 20.05.1982, 25.05.1982, 28.05.1982 by which he withdrew Rs. 250/-, Rs. 500/-, Rs. 25/- from her Savings Bank Account No. 1261. There was a charge-sheet against the said workman and a departmental enquiry was held as per order of the Disciplinary Authority of the Bank. But the Enquiry Officer held that the charges against the opposite party No. 1 was not proved.

3. However, after such decision of the Enquiry Officer, the Disciplinary Authority proposed to award consolidated punishment of discharge from service, after giving personal hearing of the respondent No. 1. The Disciplinary Authority imposed such punishment of discharge by its letter dated 26th November, 2002. The respondent No. 1 preferred appeal against the order of punishment before the Appellate Authority, the petitioner No. 2. The said Appellate Authority after giving personal hearing to the respondent No. 1, upheld the order of Disciplinary Authority on 21st April, 2003.

4. The respondent No. 1, challenged the said order of punishment before the learned City Civil Court at Calcutta and also before this High Court, but both the City Civil Court and the High Court dismissed the applications. Ultimately, the respondent No. 1 approached the Industrial Disputes Forum under the Industrial Disputes Act, 1947, through his union and there was a fullfledged hearing of the matter before the learned Central Government Industrial Tribunal, Calcutta, which, ultimately, passed an award dated 19th June, 2008, quashing the order of discharge of the respondent No. 1 from his service and also directing his reinstatement with full back wages.

5. Being aggrieved by such impugned Judgment of the learned Central Government Industrial Tribunal, Calcutta, the Central Bank of India has filed this instant application under Article 227 of the Constitution of India challenging such impugned decision of the learned Tribunal.

6. Mr. M.R. Sarbadhikary, learned Advocate, appearing for the petitioners has contended that the Enquiry Officer, who held that the bank could not prove the opposite party No. 1, the workman, guilty, knew the workman prior hand but the learned Tribunal has not considered such aspect of the matter.

7. In this connection, it may be said that the Enquiry Officer is a high official of the bank and it cannot always be said that he will have no acquaintance such workman working under the same institution. Simply because, the Enquiry Officer knows his subordinate, it cannot be said that his findings were biased in favour of the workman. The learned Tribunal has also dealt with the matter and such ground appears to be not tenable under law in absence of very evidence that the Enquiry Officer was biased.

8. The next contention of Mr. Sarbadhikary, is that, the Enquiry Officer has observed that the guilt of the concerned workman was not proved beyond reasonable doubt, which was necessary for holding a person guilty of any offence under the Criminal Procedure Code. According to Mr. Sarbadhikary, the mere possibility and probability or the preponderance of evidences, showing the involvement of the concerned workman in the alleged forgery will be sufficient to hold him guilty of such forgery and according to him, the learned Tribunal ought to have held the opposite party No. 1/workman, has been proved guilty of forging signatures of Smt. Ratna Sarkar and learned Tribunal ought to have affirmed the order of the Disciplinary Authority and the Appellate Authority

discharging the workman from service.

9. It is the well settled principle that for setting aside the judgment of the Tribunal, it must be shown either there was an apparent error of law in the decision itself or that there was a perverse finding upon the evidences on record.

10. It appears from the impugned judgment itself that before the learned Tribunal, the said workman examined as himself W.W.1, as his sole witness and Sri S. M. Basu, the Enquiry Officer was examined by the Bank, as M.W.1. It is also clear from the impugned award and is not disputed that before the Enquiry Officer, witnesses were examined on behalf of the management and the workman and some documents were also exhibited. Before the Enquiry Officer and Officer of the Savings Bank Department of the concerned Branch of the Bank, Mr. A.K. Chatterjee, a Bank official was examined as M.W.1, Mr. Niharendu Dutta was examined as M.W.2, who has stated that on 24.05.1982 and 25.05.1982 the said workman was absent in the office and that normally the Peon/Subordinate Staff does not get access to the specific signature cards or the pass book. Mr. D.K. Mukherjee, the M.W. 3, before the Enquiry Officer has also stated that the modus operandi of this fraud was by forging the signature of the account holder and thereby withdrawing the money on the basis of forged signature of Smt. Ratna Sarkar on the withdrawal slips. But he did not come to the conclusion in the confidential report that some staff members were involved. The Bank also examined one Amar Singh, as M.W.4, the Assistant Government Examiner of the questioned documents who clearly stated during the enquiry in the crossexamination that his opinion does not contain the detailed analysis regarding the aspects of similarities and dissimilarities as appeared in the questioned documents and standard handwritings. The other handwriting expert Mr. S.P. Sarcar was examined as M.W. 5, who stated before the Enquiry Officer in favour of the Bank.

11. It further appears that from the end of the workman, one Mr. P. Chatterjee was examined as D.W.1. He was a handwriting expert and according to him, the signatures in the withdrawal slips were not of the concerned workman.

12. The concerned account holder Smt. Ratna Sarkar, was not at all examined before the Enquiry Officer nor before the Tribunal. There was no evidence of any witness to the effect that he or she saw the workman to forge such signature of Smt. Sarkar or to withdraw such money on the particular dates from her account. It has been also pointed out in the impugned award itself, and it is not also disputed, that there was an attempt of the bank authority to make a further enquiry by appointing a fresh Enquiry Officer, when the bank found that the report of the first Enquiry Officer went against the Bank. Challenging such attempt of holding de novo enquiry, the concerned workman filed the civil order No. 8962(W) of 1987 in the High Court, but such writ petition was withdrawn when the Bank authorities submitted before the High Court that it would not proceed with the de novo enquiry. Such an attempt by the bank goes to show that the disciplinary authority of the bank was very much interested to entangle

the workman and to find him guilty of the charges even if, the same is not proved before the Enquiry Officer.

13. There were two reports of handwriting experts from the side of the Bank, namely, Sri Amar Singh, M.W. 4 and Sri S.P. Sarkar, M.W.5. On the other hand, the workman has also examined one P.Chatterjee and handwriting expert as the D.W.1, who stated that the alleged withdrawal slips have not been signed by the workman. Thus, it cannot be said, for sure, that the workman concerned forged the signature of the customer of the bank. Mr. Sarbadhikary, has contended that learned Tribunal and the Enquiry Officer ought to have relied upon the reports of the handwriting expert which went in favour of the bank and not in favour of the workmen. Such a situation in a penal proceeding is not at all safe and cannot be accepted. Rather it can be said that the Tribunal has rightly decided not to depend upon any of the conflicting reports of the handwriting experts and has rightly tried to find out whether there is any independent evidence in favour of the bank authority to establish the guilt of the workman. It has already been mentioned that neither the complainant herself has been examined nor her handwriting has been compared by any handwriting expert, nor is there any other direct evidence in respect of such alleged forgery by the workman. Rather there is evidence that the workman was absent from bank at least one of the dates of withdrawals and that he was not supposed to get access to the signature of the customer of the bank.

14. Learned Tribunal has considered the evidences of the Enquiry Officer and the other witnesses of the bank management, namely, Sri A.K. Chatterjee, N. Dutta, D.K. Mukherjee and the handwriting experts, Sri Amar Singh and S.P. Sarkar and Sri P. Chatterjee, as examined by the Enquiry Officer. Learned Tribunal also discussed the documentary evidences arrive at a conclusion. Thus, I find that there is no scope to hold that the Enquiry Officer or the learned Tribunal made any perverse finding of facts. It should be kept in mind that the report of the handwriting expert cannot be said to be conclusive but is a piece of evidence only, which the Tribunal may accept or may not accept after considering the surrounding circumstances.

15. Mr. Sarbadhikary, has cited the decision reported in Orissa Mining Corporation and another Vs. Ananda Chandra Prusty, and has contended that it is not like a criminal case to prove all the evidences against the workman but the possibility and probabilities and preponderance of facts which are to be deeply considered to hold the workman guilty. In the cited decision the cashier of a bank was a delinquent officer, who noted withdrawal of Rs. 1500/- while actually the customer withdrew Rs. 500/- only. The respondent's case was that those notings were based upon certain documents produced and maintained by other employees. The Supreme Court held that in such a situation it is for the respondent to establish his case.

16. The department is not expected to examine those other employees of the office to show that their acts or records could not have formed the basis of wrong

notings made by the respondent. Here, in the present case, the allegation was otherwise. Here, a direct question of forgery of the signatures of a customer was alleged. Accordingly such forgery must be proved. Thus, this decision does not come to much help to Mr. Sarbadhikary's client.

17. Mr. Sarbadhikary, further contended that for the purpose of awarding punishment to the delinquent employee, some other point, that is the loss of confidence of the bank upon the employee is to be considered first, and the amount of money misappropriated is not a factor to be considered. In the said case, the respondent was working as a contractor in Chikodi Depot of the appellate corporation and he was found to be in possession of an unaccounted money of Rs. 93/- while he was not to carry more than Rs. 5/- as his personal money. For such excess money in his possession, a departmental enquiry was started against him and he was found guilty. It was held by the Supreme Court that the workman was guilty of misconduct for carrying excess amount than the permissible amount. It was further held by the Supreme Court that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; but on the contrary it is the loss of confidence which is the primary factor to be taken into consideration. But, here in the present case, both the Enquiry Officer and the learned Tribunal were justified to hold that the charge against the workman was not proved at all. Thus, this decision does not come to much help to Mr. Sarbadhikary's client.

18. Mr. Sarbadhikary, has also cited the decision reported in J.D. Jain Vs. Management of State Bank of India and another, , where it has been held that the High Court can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of the fact of the Tribunal is perverse.

19. Such proposition is not at all disputed by Mr. Tandon, learned Advocate for the opposite parties. Mr. Tandon is right in submitting that there was nothing on record to show that the Tribunal had committed an error of law apparent on the face of record or that the finding of fact by the Tribunal is perverse.

20. Mr. Tandon, while supporting the impugned judgment of the Tribunal and the decision of the Enquiry Officer has contended that the power of the High Court under Article 227 of the Constitution is very wide and extensive, but by such power the High Court cannot act as a Court of appeal or a Court of error. It can neither review nor re appreciate , nor rewrite the evidence upon which the decision of the subordinate court or inferior tribunal rests. Such powers of the High Court are required to be exercised most sparingly. In support of his contention Mr. Tandon has cited the decision reported in 2008(9) Supreme Court Cases, Page.9 (Shamshad Ahmad and Ors. v. Tilak Raj Bajaj and Ors.). Such position of law is also not disputed and I do not find any reason to interfere with the judgment of the learned Tribunal or the decision taken by the Enquiry Officer, as the finding of facts was not at all perverse. Accordingly, the revisional application is dismissed.

21. There shall be no order as to costs.

22. Let urgent xerox certified copy of this judgment be supplied to the parties, if applied for.