

(2018) 06 DEL CK 0015

In the Delhi High Court

Case No : W.P. (C) 18116 OF 2004, 12759 OF 2005

CENTRAL BANK OF INDIA

APPELLANT

Vs

M.K.GUPTA

RESPONDENT

Date of Decision : 11-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 409
Industrial Disputes Act, 1947 — Section 17B

Citation : (2018) 06 DEL CK 0015

Hon'ble Judges : C.HARI SHANKAR

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Under challenge, in these writ petitions, preferred by the Central Bank of India (hereinafter referred to as "the Bank") and the workman M. K.

Gupta, is an Award, dated 27th May, 2004, issued by the learned Industrial Tribunal in ID No.85/1993. The learned Tribunal, has vide the said award,

declared the dismissal of the services of the workman by the Bank, w.e.f. 4th September, 1990, to be "not completely justified" and has,

consequently, directed the reinstatement of the workman, w.e.f. 1st January, 2000, with stoppage of two increments with cumulative effect. The

workman has also been held, by the award, to be entitled to 50% back wages after 1st January, 2000.

2. WP(C) 18116/2004, by the Bank prays that the impugned Award be set aside and the dismissal, of the workman's services by the Bank,

upheld. Per contra, WP(C) No.12759/2005, by the workman, seeks to assert his entitlement to reinstatement, ab initio, with full back wages.

3. I have heard Ms. Rachna Gupta, and Mr. Paranjay Chopra, learned counsel

appearing for the Bank and workman at length and perused the record.Â

4. The controversy is brief, and emanates, essentially, from charge-sheet, dated 8th August, 1983, issued to the workman by the Bank. The charge-

sheet alleged that, on 11th February, 1983, the workman (who was employed as Assistant Cashier), was instructed to effect cash transfer of ₹ 3.5

lakhs from the Lajpat Nagar Branch to the Nehru Place Branch of the Bank. However, it was alleged, having taken delivery of the said cash from the

Chief Cashier, the workman, instead of placing the cash in a proper steel box as per instructions laid down, unauthorisedly placed the cash in a

briefcase, which was left, by him, in the cabin of the Chief Cashier, from where it went missing. As such, the charge-sheet alleged that the workman

had failed to account for the said cash of ₹ 3.5 lakhs which was entrusted to his charge. Asserting that the workman was expected to ensure the

safety of the cash and to remit it securely to the Nehru Place Branch of the Bank, which, owing to his failure to comply with proper norms and laid

down procedure governing of cash, could not be effected, it was alleged that the Bank had suffered serious financial loss. As a result, the charge-

sheet alleged that the workman had acted in a manner prejudicial to the interests of the Bank, and that he was guilty of gross misconduct within the

meaning of 19.5 (j) of the Bipartite Settlement, governing relations between the Bank and its employees. The workman, therefore, was given an

opportunity to respond thereto. It is important to note that the charge-sheet does not, expressly or impliedly, doubt the bonafides of the workman, or

attribute any ulterior motive to him.Â

5. Prior to the issuance of the abovementioned charge-sheet, dated 8th August, 1983, FIR No. 87/83, was lodged, by the Bank, in the Police Station,

on 11th February, 1983 itself, under Section 409 of the Indian Penal Code (hereinafter referred to as 'the IPC'), regarding loss of the

forementioned ₹ 3.5 lakhs, and arraying the workman as an accused.

6. Following on the charge-sheet, dated 8th August, 1983 (supra), a departmental inquiry was held, culminating in the submission of an Inquiry

Report, dated 29th April, 1985, by the Inquiry Officer (hereinafter referred to as 'IO'). The Inquiry Report opined, relying on the depositions of

the Bank's witness V. N. Wadhawan (BW-3), Accountant of the Bank, and B. R.

Midha (BW-4), to the effect that no permission had been granted, to the workman, to consign the cash, entrusted to him for transmission to the Nehru Place Branch of the Bank, to a briefcase instead of a steel box, that the act of the workman, in placing the cash in a briefcase, was contrary to the instructions given to him, and ex facie unjustified. It was further opined, by the IO, that, having been entrusted with the responsibility of transmitting of cash, the workman ought not to have left the briefcase, containing the cash, in the cabin of the Chief Cashier, without any safeguard. The assertion, of the workman, that he had left the cash in the cabin of the Chief Cashier, for going to the toilet, was disbelieved, and his bonafides were found questionable (though, as noted hereinbefore, the charge-sheet, issued to the workman, did not do so). The IO, therefore, held the workman directly responsible for the loss caused to the Bank, as a result of his negligence and failure to safeguard the container, containing the cash entrusted to him. As such, all charges against the workman were, found, by the IO, to, stand proved.Â

7. The criminal proceedings that had been initiated against the workman on 11th February, 1983, culminated in judgment and order, dated 29th June, 1989 passed by the learned MM, which proceeded on the ground that there was no conclusive evidence of final entrustment of ₹ 3.5 lakh in cash to the workman, and that the only witness, to the said handing over of the cash, was the Chief Cashier (PW-6), whose role was also suspect. In this view of the matter, the learned MM concluded that the prosecution had been unable to prove, beyond reasonable doubt, the fact of handing over/entrustment of the cash of ₹ 3.5 lakhs, to the workman. Accordingly, the workman was acquitted. This decision may not, however, have any serious impact on the present adjudication, for two reasons; firstly, because the learned MM only held the charge, against the workman, not to have been proved â??beyond reasonable doubtâ?, and, secondly, because, in the present case, there is no dispute, even by the workman, regarding entrustment, to him, of ₹ 3.5 lakhs, for being transferred to the Nehru Place Branch of the Bank.

8. The Chief Manager of the Bank, as disciplinary authority, after examining the Inquiry Report dated 29th April, 1985 (supra), issued a â??Show Cause Memoâ? dated 29th June, 1990, to the workman, proposing imposition of

punishment, on him, of dismissal without notice and inviting his response thereto. Significantly, the Show Cause Memo exonerated the workman of the allegation of having unjustifiably placed the cash, handed over to him for transmitting to the Nehru Place Branch of the Bank, in a briefcase instead of a steel box, opining categorically that carriage of such cash in a briefcase was a matter of common practice, and that, in doing so, the workman had to be assumed to have acted as per the instructions of his superiors.

However, the disciplinary authority found the workman guilty of having failed to ensure safety and security of the cash, for which he was accountable.

The Show Cause Memo observed that, even if the workman wished to go to the toilet, he ought to have entrusted the container, containing the cash, to

the Chief Cashier, whereas the Chief Cashier, deposing as MW-1, had specifically stated that he was unaware of the fact that the workman had gone

to the toilet, leaving the briefcase in his cabin. In these circumstances, the Show Cause Memo held the workman negligent in handing the cash of ₹

3.5 lakhs, and guilty of failure to ensure the safety and security of the said cash, resulting in serious financial loss to the Bank.

9. The workman responded to the aforementioned Show Cause Memo, dated 29th June, 1990.

10. Vide order dated 4th September, 1990, the disciplinary authority held that the response, of the workman, to the Show Cause Memo, did not contain

any substantial defence to the allegations put to him; resultantly the punishment of dismissal without notice, as earlier proposed, was awarded to

the workman.

11. The workman appealed, on 4th September, 1990, against the imposition, on him, of the aforesaid punishment of dismissal without notice, to the

appellate authority, i.e. the Deputy General Manager of the Bank.

12. Vide order dated 8th January, 1992, the Deputy General Manager of the Bank, as appellate authority, rejected the appeal of the workman.

13. This resulted in the workman initiating an industrial dispute, which was referred, by the Central Government, for adjudication to the learned

Industrial Tribunal, vide letter dated 23rd November, 1993, containing the following single term of reference:-

Whether the action of the management of Central Bank of India, dismissing

the services of Shri M.K.Gupta, Asstt. Cashier w.e.f. 4.09.1990 is

justified? If not to what relief the concerned workman is entitled?â??

14. Consequent thereto, the workman filed his Statement of Claim, dated 17th January, 1994. Reliance was predictably, placed, by the workman, on

the judgment, dated 29th June, 1999 of the learned MM, acquitting him of the charge under Section 409 of the IPC. The workman also complained of

having been discriminated against, as other officers/employees, also charge-sheeted in respect of the same incident of loss of ₹ 3.5 lakhs, had been

awarded lesser punishment. Certain technical objections, regarding the permissibility of initiating disciplinary proceedings within one year of filing of

the FIR, and failure, on the part of the disciplinary authority, to dispose of the matter within one year of availability of the Inquiry Report, based on

provisions of the Bipartite Settlement between the Bank and its employees, were also raised; however, at this distance of time,Â no useful purpose

would be served by making reference thereto, especially as no contention, to the said effect, was urged before me, even during arguments in Court. In

fine, the workman prayed that the order, dismissing him from service, be set aside and he be reinstated with continuity of service and full back wages.

15. In response, the Bank filed its written statement before the learned Industrial Tribunal, meeting the allegation of having discriminated against the

workman, vis-Ã -vis his colleagues discharged in the matter, by stating that the roles played by different employees was different. Surprisingly, it was

sought to be averred, in the written statement, that, â??the workman concerned was involved in acts of misappropriation of ₹ 3.5 lakhs which were

proved in a fair and proper departmental inquiryâ?, whereas, in fact, the charge-sheet dated 8th August, 1983 (supra), issued to the workman, did not

allege any misappropriation, by him, of ₹ 3.5 lakhs, but limited the allegation against the workman to â??negligence in failing to ensure safety and

security of the said amountâ?. In fact, a reading of the written statement filed by the Bank before the learned Industrial Tribunal reveals that the Bank

proceeded, throughout, on the premise that the charge against the workman was of misappropriation of ₹ 3.5 lakhs, whereas, as already noted

hereinabove, this was not so.Â

16. The workman rejoined thereto.

17. Vide the impugned Award dated 27th May, 2004, the learned Industrial

Tribunal disposed of the aforementioned industrial dispute opining as under:-

I have perused the statement of the witnesses and by evidence of the witnesses, it is not proved satisfactory that the workman embezzled the amount but his gross negligence and misconduct is proved as he was entrusted with the work of remittance of the cash and he should be precautionous regarding the cash. He should not take it lightly. Whenever, the Chief Cashier's cabin is opened and somebody goes out, it is closed again. The workman in his affidavit has written that the cash was placed in a brief case and he went to toilet. The workman ought to have entrusted the brief case to the Chief Cashier but it has nowhere been stated that when he went to the toilet, he entrusted the brief case containing the cash with the Chief Cashier. He has only said in the affidavit that money was placed in the brief case and he went away to the toilet so he has not given a satisfactory reply that why he did not entrust the brief case to the Chief Cashier and why he left the brief case containing money and went away. As such, the money was placed in the briefcase, it was the bounden duty of the workman applicant to take precaution of the briefcase and to place it in safe custody. It indicates the negligence on the part of the workman. Embezzlement of the money has not been proved. Still in case, there is no embezzlement, there is gross misconduct of the workman in handling the brief case containing the money. The steel box was not available so he should not place the money in brief case on advice of anybody. The enquiry was withheld because of the trial and the own request of the workman.

In the enquiry, the workman has been afforded full opportunity and the principles of natural justice have been followed and the workman was found guilty of gross negligence and misconduct and so the punishment of dismissal without notice was given to him.

An FIR was lodged against the workman and embezzlement is not proved even in the enquiry. No independent witnesses have come out according to the own version of the workman, the money was placed in the brief case and he had to take the brief case to Nehru Place Branch but leaving the briefcase in the Chief Cashier's cabin unattended, he went to the toilet. This conduct of the workman is suspicious and it amounts to gross and

grave misconduct in handling the cash of a very huge amount. So far as punishment is concerned, it amounts to victimization of the workman applicant as he has been dismissed for gross misconduct.Â

In the circumstances of this case, his increment should be withheld with cumulative effect and he should be reinstated after sometime without back wages. As such the punishment inflicted is not commensurate in view of the misconduct of the workman.Â??Â

In these circumstances, the learned Industrial Tribunal held that withholding of two increments of the workman, with cumulative effect, would suffice as punishment condign to the misconduct committed by him. Following on these findings, the learned Industrial Tribunal answered the reference, made to it, thus:Â

â??The action of the management of Central Bank of India, in dismissing the services of Shri M.K. Gupta, Asstt. Cashier w.e.f. 4.09.1990 is not completely justified.Â The workman deserves reinstatement from 1.1.2000 with the stoppage of two increments with cumulative effect.Â The workman applicant will be entitled to get 50% back wages after 1.1.2000 with the stoppage of his two increments with cumulative effect.â??

18. As already noted hereinabove, the aforementioned Award forms subject matter of challenge, before this Court, in these two writ petitions, with the Bank contending that the dismissal, of the services of the workman, deserves to be upheld, and the workman, per contra, asserting that he deserved to be reinstated in service with full back wages.

AnalysisÂ

19. An order passed consequent on disciplinary proceedings, it is trite, cannot traverse the boundaries of the allegations contained in the charge-sheet itself . [Refer M.V.Bijlani vs U.O.I., (2006) 5 SCC 88]

20. The charge-sheet, dated 8th August, 1983, issued to the workman, deserves to be reproduced, in its entirety, thus:Â

â??Shri Mohinder Kumar Gupta, Asstt. Cashier, is hereby informed that his reply dated 14.3.83 to the Bankâ??s Memo No. RO:PRS:DAD:83/0163

dt. 11.2.1983 issued to him, has not been found satisfactory. It has, therefore, been decided to hold a departmental enquiry against him and he is

hereby charged as under :-

On 11.2.83 Shri Gupta was instructed to effect a cash remittance of Rs.3.50 lacs from Lajpat Nagar branch to B/o Nehru Place. Shri Gupta got the

relevant voucher and manifold relating to the remittance signed/authorized by the Accountant/Branch Manager and took delivery of cash for the

purpose from Sh. B.P. Jain, Chief Cashier at about 10.45 a.m. on 11.2.83 in the following denominations:Â

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Instead of placing the aforesaid cash received by him in a proper steel box as per instructions laid down and instead of security effecting remittance to

Nehru Place Branch, Shri Gupta unauthorisedly placed the said cash in a brief case containing cash of Rs.3.50 lacs had been left by him in the Chief

Cashier's cabin and that the said brief case with the cash missing. The same has not been traced so far.

Shri Gupta thus failed to account for the Bank's cash of Rs.3.50 lacs entrusted to his charge. Whereas he was expected to ensure the safety and

correctness of the said cash and remit the same securely to B/o Nehru Place, he failed to comply with the proper norms and laid down procedures in

transit of cash and has involved the Bank in an incident of serious financial loss.

The aforesaid acts on the part of Shri Gupta are prejudicial to the interests of the Bank and constitute gross misconduct within the meaning of para

19.5 (j) of the Bipartite Settlement. The departmental enquiry into the aforesaid charges will be held by Shri C.L. Sharma, Branch Manager, B/O

Nehru Place and the time, date and venue of the enquiry will be communicated to him by the said Enquiry Officer. At the enquiry he shall keep ready

with him all oral and documentary evidence which he may wish to tender or produce on his behalf and he will also be allowed to cross-examine the

witnesses who may be produced by the management during the enquiry proceedings.

Shri Gupta will be permitted to be defended by representative of a registered trade Union of Bank employees of which he is a member. He should

inform the Enquiry Officer the name of his representative and the names of the witnesses he intends to produce at the enquiry on his behalf. He is

also informed that if he fails to present himself at the enquiry on the appointed dates or on the adjourned dates, the enquiry will be held *ex parte* and the

findings thereon will be conclusive and binding on him.

Shri Gupta should note that he will continue to be under suspension as already advised vide above referred Memo dated 11.2.1983.

(Emphasis supplied)

Clearly, the aforementioned charge-sheet, merely alleged failure, on the part of the workman, to account for the cash of ₹ 3.5 lakhs which had been

entrusted to his charge, and to ensure the safety and security thereof. By allegedly failing to comply with the proper norms and laid down

procedures in transit of cash, the charge-sheet alleged that the workman had involved the Bank in an incident of serious financial loss. These

acts, of the workman, it was alleged, were prejudicial to the interest of the Bank and constituted gross misconduct within the meaning of para 19.5

(j) of the Bipartite Settlement. The said clause, it may be noted, covered doing acts prejudicial to the interests of the Bank. A A

21. It is clear, from a reading of the charge-sheet, dated 8th August, 1983 (supra), that it did not, expressly or by necessary implication, attribute any

malafides or mens rea to the workman. Far from alleging misappropriation, by him, of the cash amount of ₹ 3.5 lakhs which turned out to be his

undoing, the charge-sheet, conspicuously, did not allege the act of the workman leaving the cash, in the briefcase, in the cabin of the Chief Cashier to

be suspicious in any manner. Clearly, therefore, the charge against the workman, was essentially of negligence simplicitor, and not of

negligence culpable. A

22. Further, a holistic reading of the charge-sheet clearly indicates that the breach of norms and procedures, alleged against the workman, was

only in his placing the cash in a briefcase, instead of a steel box. A This allegation, however, does not continue to survive, in view of the Show Cause

Memo, dated 29th June, 1990 (supra), in which the disciplinary authority categorically held as under:

So far as the second part of the charge is concerned i.e. placing the aforesaid cash in a brief case instead in a steel box, I do not agree with the

findings of the Enquiry Officer because of the fact that it was the practice prevailing in the Branch to remit the cash in a brief case. A So far as the

authority given to the CSE is concerned, it has been established from the evidence brought on record by the Presiding Officer that an authority had

been given to the CSE. A MW-1 in his examination-in-chief has clearly deposed that the remittance had been allowed in the brief case of the

Accountant and he had personally enquired about it from Accountant and while allowing the remittance in brief case he had obeyed the instructions of

his superiors. A Not only this, I find that even on several other dates the remittance had been sent in a brief case. A Such dates are recorded on page

14 of the enquiry proceedings.

In view of this I hold that the remittance had been taken by Mr. Gupta in a brief

case with the consent of his superiors and, I, therefore, exonerate him in respect of this part of the charge.â??

(Emphasis supplied)

23. Viewed in chronological sequence, it appears that the Bank has, at every stage, chosen to better the case, initially made out by it, against the workman in the charge-sheet.Â

24. The charge-sheet specifically asserts that, while taking delivery of the cash from the Chief Cashier, the workman â??got the relevant voucher and manifold relating to the remittance signed/authorized by the Accountant/Branch Managerâ?. No default, at this stage, is alleged against the workman.

Rather, the immediately succeeding paragraph of the charge-sheet proceeds to allege that â??instead of placing the aforesaid cash received by him in

a proper steel box as per instructions laid down and instead of security effecting remittance to Nehru Place Branch, Shri Gupta unauthorizedly placed

the said cash in a brief case containing cash of ₹ 3.50 lakhs had been left by him in the Chief Cashierâ??s cabin and that the said briefcase with the

cash missingâ?. The failure on the part of the workman, to, â??follow the laid down norms and proceduresâ?, is, on the plain words of the charge-

sheet, relatable only to the placing of the cash in a briefcase instead of a steel box. No procedural violation, at the stage of taking delivery of the cash

from the Chief Cashier, is alleged in the charge-sheet; rather, the manner in which the charge-sheet is worded seems to indicate that the workman

was found to have complied with due procedure while taking delivery of the cash. The charge-sheet does, however, fault him for having placed the

cash in a briefcase instead of a steel box, and, by leaving the briefcase unattended in the cabin of the Chief Cashier, in failing to ensure its security and

safety. The â??negligenceâ?? attributed to the workman, by the Bank, was to this extent above, and no more.Â

25. The Inquiry Report, dated 29th April, 1985, too, does not depart from the charge-sheet, and finds the workman guilty only of keeping the cash,

entrusted to him, in a briefcase, instead of a steel box, and in failing to ensure safety and security of the said briefcase. While doing so, however, the

IO observes, towards the conclusion of his Inquiry Report, thus:Â

â??Since the CSE has admitted in his own reply dtd. 14.5.83, (Ex.B-14) that cash after counting was placed in a brief case was kept in the Chief

Cashier's cabin and he went to toilet, it is very much suspicious that when he was attending a very very important duty of cash remittance, he

should have not left the container with the Chief Cashier's Cabin without any safeguard of the brief case. A CSE was to entrust the responsibility

of the same to the guard and cash peon in addition to the Chief Cashier. Moreover, it was during the starting hours of the Bank business and in

general every employee starts duty after getting free from nature's call and question of going to attend nature's call within about 40 to 50

minutes from his joining the duty is not only unreasonable but also gives thought to pre-planning of the incident.

(Emphasis supplied)

The above extracted findings of the IO, besides being totally presumptive and conjectural in nature, clearly travel beyond the charge-sheet issued to

the workman, which did not contain any allegation regarding 'pre-planning of the incident' by him, or consider the acts of the workman to be

'suspicious' in any manner; neither did it doubt the truth of the assertion, of the workman, that he had gone to the toilet leaving the briefcase in

the Chief Cashier's cabin, as the IO seems to have done.

26. Proceeding, now, to the Show Cause Memo, dated 29th June, 1990, it is alleged, by the disciplinary authority, in the said Memo, as under:

'After carefully analyzing the evidence brought on record of the enquiry I fully agree with the findings of the Enquiry Officer that the CSE was

instructed to effect a remittance of Rs.3.50 lacs from Lajpat Nagar Branch to Nehru Place Branch and he had got relevant voucher and manifold

relating to the remittance signed/authorized by the Accountant/Branch Manager. It has been clearly established that he had prepared the relevant

voucher and manifold relating to this remittance and he has got the same signed/authorized by the Accountant/Branch Manager. It has been also

established in the enquiry that he had signed on the reverse of the manifold and voucher for having received the cash. The Member's

contention that he subscribed the signatures on the back of the manifold in advance and that he did not receive the cash and pending his signatures in

the Register he had gone to toilet is purely his saving noice, carrying no force at all because during the course of enquiry in the written statement

filed by him he has clearly admitted that he had kept the bundles of cash

amounting to Rs.3.50 lacs in the brief case.

As regards cash remittance register is concerned, from the proceedings this emerged as a fact that this register was not being maintained properly and

the manifold and the voucher was the only instrument used in the Branch for cash remittance.Â Mr. Gupta being the concerned person used for cash

remittance fully knew the procedure followed in the Branch for cash remittance.Â If he was strictly adhering to the procedure rather than the

practice prevailing in the Branch, he should not have signed on the back of the manifold/voucher before receipt of the cash.Â Since he fully knew the

practice was that of signing the voucher/manifold on its back in token of his having received the cash, he had signed the said manifold/voucher and not

register.Â Therefore, his contention that he had kept the brief case in Chief Cashier's cabin pending signature on the register and he had gone to

attend nature's call is purely an afterthought.Â I, therefore, hold this part of the charge as proved against the CSE and I fully agree with the

findings of the Enquiry Officer in this regard.Â??

(Emphasis supplied)

Again, here, the disciplinary authority disbelieved the submission, of the workman, that he had visited the toilet, leaving the briefcase, containing the

cash, in the Chief Cashier's cabin. This observation deviates sharply from the charge-sheet dated 8th August, 1983, which proceeded on the

premise that, by thus leaving the briefcase unattended in the cabin of the Chief Cashier, the workman had negligently failed to ensure the safety and

security of the cash.

27. Insofar as the impugned Award is concerned, it is starkly contradictory in terms. The learned Tribunal, first alleges the workman to be guilty of

â??gross misconductâ? and, thereafter, faults the bank for having â??victimized the workman by punishing him for gross misconductâ?. There is

apparent non-application of mind, on the part of the learned Industrial Tribunal, in deciding the matter.Â

28. In any case, as Bank, and workman, are equally aggrieved by the said award, I have, before me, effectively a tabula rasa.

29. Harking back to the charge-sheet dated 8th August, 1983, the only violation of procedure, alleged against the workman therein, was in his keeping

the cash, entrusted to him, in a briefcase instead of a steel box. This allegation

stands dropped by the disciplinary authority. As such, the allegation, in the charge-sheet, of the workman having "failed to comply with the proper norms and laid down procedures", fails.Â

30. The only other allegation, in the charge-sheet to the workman, was of negligence in failing to ensure safety and security of the cash entrusted to him. As already observed by me hereinabove, the observations, in the Inquiry Report, dated 29th April, 1985 as well as in the Show Cause Memo, dated 29th June, 1990 (supra), issued by the disciplinary authority, to the effect that the acts of the workman were "suspicious" and "pre-planned" are obviously unsustainable in law, being in excess of the charge contained in the charge-sheet which does not, at any point, question the bona fides of the workman, or the manner in which he acted.

31. Insofar as the allegation of laxity and negligence, on the workman's part, in failing to ensure safety and security of the cash entrusted to him, is

concerned, however, the Bank, in my view, has an open-and-shut case. There is no dispute about the fact that the workman had received the said

cash, and that the cash was meant to be transmitted to the Nehru Place Branch of the Bank. The act of the workman in leaving the cash, so entrusted

to him, unattended in the cabin of the Chief Cashier, cannot be excused. While, it is true that negligence by itself, is ordinarily not an actionable

"misconduct" (UOI v. J. Ahmed, (1979) 2 SCC 286, Insp. Prem Chand vs Govt. of NCT of Delhi, (2007) 4 SCC 566 and Ravi Yashwant Bhoir

vs. Collector, (2012) 4 SCC 407), it is equally well-settled that, where such negligence results in serious or disciplinary consequences, disciplinary

action, and punishment following thereupon, is merited. Being an employee of the Bank, the respondent was expected, at all times, to exercise the

highest degree of care and caution in dealing with cash consigned to his custody, which represented public monies.

Negligence, by a Bank employee, in dealing with cash entrusted to the Bank by the customers thereof, and held by the Bank in fiduciary capacity, is

inexcusable, and has, inevitably, to visit the employee with penal consequences.Â

32. Having said that, in the absence of any allegation, in the chargesheet issued to him, of mala fides, or ill-motive, on his part, it is obvious that the

workman could not, justifiably, have been visited with the extreme punishment of removal/dismissal from service. At the same time, while dealing with

proved delinquency, it is axiomatic that punishment must be proportionate to misconduct. Misplaced sympathy, in such cases, can, on occasion, be as destructive, to the larger public interest, as misguided severity.Â The learned Industrial Tribunal has thought it appropriate to reduce the punishment to withholding of two increments with cumulative effect. Given the seriousness of his misconduct, I am of the view that the learned Industrial Tribunal has been unduly lenient with the workman, especially keeping in mind the fact that he was a Bank official, who had, undoubtedly, shown gross negligence in handling cash entrusted to him for onward transmission.Â The decision, of the learned Industrial Tribunal, to merely withhold two increments, even while reinstating him in service and awarding 50% back wages for the period from 1st January, 2000,Â appears to be more of a bonanza than a penalty.Â

33. I would have been inclined to award a substantially higher punishment to the workman, in the facts of the present case; however, given the fact that he is now approaching the eighth decade of his life, and claims to be in impecunious circumstances, I choose to modify the directions, in the impugned award, only to the following extent:

(i) The declaration, by the learned Industrial Tribunal, of the dismissal, of the workman, from service, as illegal and unjustified, is affirmed and upheld.

However, the direction to reinstate the workman in service is set aside as having become incapable of implementation with efflux of time, as the workman has crossed the age of superannuation during the pendency of these proceedings.Â

(ii) The direction to pay 50% back wages to the workman, is also set aside.Â Â

(iii) For the period following the date of the impugned Award till the date of his superannuation, the workman would be entitled to a lump sum

payment, computed at 25% of the wages which he would have drawn, had he been reinstated and continued in service.Â Inasmuch as the decision, in

the impugned Award of the learned Industrial Tribunal, declaring the dismissal, of the workman, as illegal and unjustified, is upheld, the workman

would also be entitled to retiral benefits, computed on the basis thereof.

(iv) The Bank would be entitled to adjust, while disbursing the above amounts, all payments made to the workman during the course of these

proceedings, whether under Section 17-B of the Industrial Disputes Act, 1947, or

otherwise.

34. Payments, in accordance with the above directions, be computed and made, to the workman, within a period of four weeks from the date of receipt, by the Bank, of a certified copy of this judgement.

35. Resultantly, while WP (C) 12759/2005 is dismissed, WP(C) 18116/2004 is partly allowed in terms of para 33 above.Â

36. There shall be no order as to costs.