

(2006) 09 DEL CK 0171

In the Delhi High Court

Case No : W.P (C) No. 18495 of 2004 and CM 14024 of 2004

Central Bank of India

APPELLANT

Vs

Mr. P.C. Chaturvedi and Another

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2006) 09 DEL CK 0171

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : S. Janani and Deepak Goel, for the Appellant; J. Buther, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The writ petition is directed against the Award of the Central Government Industrial Tribunal cum Labour Court, New Delhi in I.D. No. 94/91 whereby the Tribunal has set aside the inquiry and the penalty imposed upon the respondent workman. The Award was given on a reference on the following terms "whether the action of the Management of the Central Bank of India in dismissing Shri P.C. Chaturvedi, Sub-Staff from the service of the bank is justified? If not, to what relief the workman is entitled?" The charge against the respondent was that he had submitted a forged mark-sheet from the Agra University declaring him passed in 3rd division in the B.A. examination of 1975 which helped him getting promotion to the clerical grade. Further charge against him was that he had taken two advances of Rs. 500/- and Rs. 1000/- on 18.8.1986 and 3.9.1986 respectively for sending telegrams, which had not been adjusted. An inquiry was initiated. The respondent admitted his mistakes and said that he had deposited the money which had been entrusted to him along with interest. Further, he said that several employees who had produced false certificates for promotion had been reinstated and that a lenient view should be taken in his matter. Accordingly, the Inquiry Officer found that the charges

against the respondent were proved. Before the Labour Court the respondent pleaded that he admitted the charges as he had been assured of a lenient view, but eventually he was dismissed from employment. The Labour Court found that the finding of the Inquiry Officer was correct and fair. However, the Labour Court found that since the management did not deny that certain other employees who had committed similar misconducts had been let off with minor punishments, the same attitude should have been adopted towards the petitioner for otherwise it would amount to victimisation. Accordingly the reference was answered by saying that the dismissal of the respondent was not justified and that he should be reinstated in service with stoppage of four increments with cumulative effect and payment of 50% back wages from the date of his dismissal.

2. Before this Court this Award is alleged to be bad on the ground that it is perverse, that it was a case of loss of confidence and, Therefore, the petitioner was justified in removing him from service. Further it is submitted on behalf of the petitioner that even if the punishment was not proper, the Labour Court should have left the matter of punishment with the petitioner.

3. In the counter affidavit it is contended that the respondent did not apply for promotion and did not appear for promotion test, that the petitioner did not produce any document in the inquiry to show that the mark-sheet was forged, that the admission of the respondent was seen in the letter written by the respondent on 10.2.1986 wherein he had written that he had passed B.A. which was equivalent to Sahitya Ratan Examination from Prayag Vishwavidyalaya, Allahabad, that so far as the advance was concerned, it was only a case of irregularity, that the Inquiry Officer lured him to admit the charges with the assurance of a lenient view, that he was not given any defense representative, that the management did not establish the date of production of the false mark-sheet and the date of submission of application by the workman to secure promotion, that the respondent only admitted in writing of having passed B.A. examination from Agra University in 1975 on account of some inadvertence, and that on the relevant day the rules did not include the Clause 19.5(m) which listed making a false statement in any document pertaining to or in connection with the employment in the bank as misconduct.

4. In the rejoinder filed, the petitioner reiterated its case and denied the allegation that the Inquiry officer had assured the respondent of any lesser punishment. It is further contended in the rejoinder that the management had lost confidence on the respondent and, Therefore, had rightly discharged him from the service.

5. From the above narration of the cases of the respective parties, it is clear that the respondent had committed three misconducts. Two of the misconducts related to taking unauthorised advance from the bank for the purpose of sending certain telegrams. He subsequently deposited the amount in the bank. Secondly, he submitted not only a false statement that he had qualified in the B.A. examination from the Agra University but also produced a false mark-sheet.

None of the two can be said to be an act committed by inadvertence. There is no need for any specific rule to include such conducts in the list of misconducts. These acts were grossly misconducts and could also be looked upon as criminal offences. Therefore, the finding of the Inquiry Officer was held to be just and fair. The Labour Court also held that the misconduct had been sufficiently proved.

6. The Labour Court, however, reduced the punishment from discharge to stoppage of four increments with cumulative effect. The only question is whether the Labour Court was justified in interfering with the punishment. On behalf of the petitioner, it is argued that the power of the Labour Court u/s 11-A to interfere with the punishment imposed by the management could be used only in a situation where the punishment was so disproportionate as to disturb the conscience of the Court. Reliance has been placed on the judgment of the Supreme Court in the case of *Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*, in which the Supreme Court quoted with approval a part of its earlier judgment in the case of *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, which is as under:

20. 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 the various judgments of this Court referred to hereinabove 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 11-A 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 the 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.

7. The next question is whether the punishment of discharge in the facts of the case was such that it shocked or disturbed the conscience of the Court. For this purpose, the petitioner has relied upon the judgment of the Supreme Court in the case of *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourarara Sangha Etc.*, . In this case the workman was dismissed on account of mis-appropriation. The Labour Court set aside the order of dismissal and directed reinstatement with 25% back wages on the ground that the past record was without blemish. The Supreme Court held that the sympathy of the Labour Court was totally uncalled for. It was observed that once an act of mis-appropriation is proved, may be for a small or large amount, there is no question of showing uncalled sympathy and reinstated the employee in service. It was also observed that in such cases of proved mis-appropriation there was no question of considering past record. In the present case there has been two occasions of mis-appropriation. Although the respondent repaid the misappropriated amount, the fact will remain that the

respondent had committed an act which had shaken the faith of the employer in him. Secondly, the respondent had not only committed two instances of misappropriation, but had also committed a graver offence of submitting a forged document in order to defraud the management. Together, the offences could not be looked at as minor ones. The punishment of discharge was not disproportionate to the misconduct.

8. The third question to be considered is whether the respondent was entitled to a lesser punishment in view of the others being dealt with leniently. Suffice it to say here that the Labour Court has actually not compared the misconducts committed by the other employees and the misconduct committed by the respondent. In the present case, the respondent has not only submitted a forged document, but has also committed two instances of misappropriation. There is no instance given in the impugned Award that with this type of misconducts any employee has been let off with a smaller punishment. Therefore, the Award of lesser punishment cannot be sustained also on the ground of parity.

9. In view of the above, this Court has no option but to quash the impugned Award. The writ petition is allowed and the impugned Award is hereby quashed with the above observations. CM 14024/2004 is accordingly disposed of.