
(2009) 04 BOM CK 0007
In the Bombay High Court
Case No : Writ Petition No. 4631 of 1997

Dena Bank

APPELLANT

Vs

D. Kundadia and Another

RESPONDENT

Date of Decision : 23-04-2009

Acts Referred:

Evidence Act, 1872 — Section 11A

Citation : (2010) 2 LLJ 682

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : S.K. Talsania, Pallavi Dedhia, instructed by Sanjay Udeshi, for the Appellant;

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard the learned Counsel appearing on behalf of the petitioner and respondent No. 1 who is appearing in person.

2. By this petition, the petitioner is challenging the judgment and order passed by the Central Government Industrial Tribunal in Reference CGIT No. 1/12/1995 whereby CGIT was pleased to hold that the finding of Inquiry Officer holding the workman guilty of the charges of embezzlement and defrauding the bank was perverse and was not sustainable on the basis of acceptable evidence on record. Brief facts are as under:

3. The respondent was working with the petitioner bank since September 1991 as Typist-cum-Clerk. On May 15, 1991, he was posted as a Cashier at their Dongri Branch on which date one account holder viz. S.M. Jewellers deposited cash of Rs. 50,000/- alongwith the pay-in-slip. The details of the cash particulars were written on the reverse of the pay-in-slip. The respondent accepted Rs. 50,000/- and put the stamp of cash received on the pay-in-slip. On the same day, again S.M. Jewellers deposited Rs. 20,000/- by filling pay-in-slip. On the second pay-in-slip also, the cash particulars were mentioned as 50 x 200 instead

of 50 x 400. It is the case of the petitioner that the respondent advised the person who came to deposit the amount to correct the cash paid denomination as 50 x 400 and the pay-in-slip was released by putting a stamp cash received. The case of the bank is that one S.T. Suryavanshi who was also clerk working in the said branch reported for duty late at about 11.25 a.m. On the same day, therefore, the Branch Manager advised him not to sign the muster and to go home. According to the petitioner-bank, the respondent called him to his cabin and handed over 200 notes of Rs. 50 the sum of Rs. 10,000/- and he advised the said clerk Suryavanshi to hand it over at his residence. The case of the petitioner bank is that in the evening, the respondent informed the officer in-charge about shortage of cash of Rs. 10,000/-. It was, therefore, alleged that the respondent had misappropriated Rs. 10,000/- out of Rs. 50,000/- received from S.M., Jewellers by taking advantage of cash particulars which were wrongly written by them at the back of the pay-in-slip dated September 14, 1991 i.e. Rs. 50 x 200 instead of Rs. 50x400 Rs. 50,000/- correctly. The respondent informed the manager by letter dated September 24, 1991 that he was ready to pay shortage of cash of Rs. 10,000/-, however, reiterated his stand that shortage was due to less remittance by the person who had deposited the said cash on behalf of the said party S.M. Jewellers. Three days thereafter on September 27, 1991, the said clerk S.T. Suryavanshi by letter dated September 27, 1991 informed the management that the first respondent had given him one packet and asked him to give the said packet at his residence. Thereafter, on October 11, 1991, the first respondent was suspended and charge-sheet was issued to him on November 4, 1991. The first respondent filed his reply dated December 7, 1991. An inquiry was held and the Inquiry Officer by report dated September 14, 1992 held that the charges against the first respondent were established and he was guilty of the said charges. On September 21, 1992, report and the findings were submitted and explanation was asked from the first respondent. On October 8, 1992, the respondent submitted his explanation. Show Cause Notice was issued by the Disciplinary Authority on December 2, 1992 asking the respondent why a proposed punishment of termination should not be imposed upon him. After reply was given by the respondent, the Disciplinary Authority imposed punishment or dismissal without notice with immediate effect. An appeal which was preferred by the respondent to the appellate authority was dismissed on August 10, 1992.

4. The first respondent thereafter raised an industrial dispute challenging the dismissal which was referred to the CGIT for adjudication. Statement of claim was filed by the respondent on August 22, 1995. The petitioner also filed his written statement. Rejoinder was filed by the respondent. The Industrial Tribunal by Award dated May 28, 1997 held that the findings of the Inquiry Officer were perverse. Being aggrieved by the said finding, the petitioner has preferred this petition under Articles 226 and 227 of the Constitution of India.

5. It was submitted by the learned Senior Counsel for the petitioner that the Industrial Tribunal had exercised jurisdiction not vested in it by law in holding

that the finding of the Inquiry Officer was perverse and was not based on acceptable evidence. The learned Senior Counsel further submitted that the Industrial Tribunal erred in not accepting the testimony of Suryavanshi who was examined as witness on behalf of the bank. The learned Counsel in support of his submission relied on the judgment of the Apex Court in the case of State of Haryana and Another Vs. Rattan Singh, and judgment of the Apex Court in the case of Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh, .

6. The respondent who appeared in person submitted that the Industrial Tribunal was justified in setting aside the finding of the Inquiry Officer and had observed that the said finding was perverse. He submitted that the Industrial Tribunal had the jurisdiction to set aside the finding of the Inquiry Officer if it found that the finding was perverse. He submitted that the Tribunal after going through the evidence on record had come to the conclusion that the dismissal of the respondent was not justified and that the charges were not proved. He further submitted that the witness -who was examined by the bank in support of its" case had given the statement against the respondent only after he had given a letter to the bank informing the bank that without prejudice to his say and as per the manual of instructions,, he was willing to deposit the shortfall of cash." He submitted that it was evident, therefore, that the said witness is a got up witness who had sent a letter to the Manager after considerable lapse of time from the date of the incident.

7. I have given my anxious consideration to the submissions made by the learned Senior Counsel appearing on behalf of the petitioner and the respondent who was appearing in person. In my view, no case is made out by the petitioner bank for interfering with the Award" passed by the CGIT while exercising the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

8. Few admitted facts are that the respondent was asked to work as Receiving Cashier since the regular Receiving Cashier was on leave. On the relevant date i.e. on September 14, 1991, S.M. Jewellers who were the customers of the bank had sent their servant to make two deposits under the pay-in-slip Nos. 17 and 54, respectively. Pay-in-slip no. 17 showed that the amount of Rs. 50,000/- had been paid to the respondent and therefore, he had signed the said pay-in-slip indicating that he had received the said money. The question, therefore, was whether the respondent had in fact received Rs. 50,000/- or had received Rs. 40,000/- and had negligently signed the pay-in-slip no. 17 for having received Rs. 50,000/-. On the reverse side of the pay-in-slip the following particulars were mentioned viz.:

9. It is further an admitted position that on that day, the cash counter was very busy and there was long queue for depositing the money which was borne out by the letter written by the Bank Manager in which the Bank Manager had also expressed doubt that the clerk of S.M. Jewellers had purposely paid Rs. 10,000/- less on the cash counter after noticing the rush from the cash receiving counter.

The Manager had also stated in his letter that he had cross-examined the clerk of S.M. Jewellers who had informed him that he had paid two new bundles and two old bundles of Rs. 50/-. The Manager also in his letter had recorded that no new bundles are found in the receipt of 50 denominations. Further admitted facts are that the incident took place on September 14, 1991. The Manager had written the letter at Exhibit N-I dated September 16, 1991 wherein he had expressed doubt about the story of S.M. Jewellers. The Manager also decided to lodge the police complaint against S.M. Jewellers who in turn stated that he would file a complaint against the cashier i.e. The respondent herein. The respondent wrote a letter to the Branch Manager dated September 24, 1991 in which he stated that being the president of the registered trade union and since his prestige was involved, he was ready to pay shortage of Rs. 10,000/- by one installment though he reiterated his earlier stand that this was due to the short remittance by S.M. Jewellers. From September 18, 1991, the Branch Manager made a complaint to the Sr. Inspector of Police expressing his doubt that the clerk of S.M. Jewellers had deposited Rs. 10,000/- less and asked the police to do the needful. Three days thereafter i.e. on September 27, 1991, Shri S.T. Suryavanshi wrote a letter to the regional bank in which he alleged that the respondent had asked him to deliver envelope which contained Rs. 10,000/- cash and which was opened by him in the presence of three witnesses. The Inquiry Officer accepted the evidence of S.T. Suryavanshi and held that the charge of misappropriation had been proved against the respondent. On the basis of the said finding recorded by the Inquiry Officer, the services of the respondent were terminated.

10. Shri Talsania, learned Senior Counsel appearing on behalf of the petitioner strenuously urged that the CGIT had erred in setting aside the finding recorded by the Inquiry Officer. He submitted that if two views are possible and if one view is taken by the Inquiry Officer, it was not open for the Tribunal to set aside its own view to the view taken by the Inquiry Officer. He relied on the judgment of the Apex Court in the case of *State of Haryana and Anr. v. Rattan Singh* (supra).

11. In my view, the ratio of the judgment in the case of *State of Haryana and Anr. v. Rattan Singh* (supra) will not apply to the facts of the present case. In the said case, the respondent therein was a bus conductor whose job was to collect fares from the passengers and issue tickets to them. A flying squad which was appointed for the purpose of checking proper collection by the bus conductor stopped the bus and gave a report stating therein that four passengers had alighted from the particular stop without tickets and 11 passengers travelled in the bus also did not have tickets though they claimed to have paid the fares. A domestic inquiry was held. The charges against the conductor were established and the services of the bus conductor were terminated. The trial Court set aside the order of termination which order was confirmed in appeal. The High Court also confirmed the finding of the lower Court. The Apex Court noticed that the principal ground on which the Courts had declared that the termination was bad was that none of the 11 passengers had been examined at the domestic inquiry and secondly, the Courts had observed that the instructions which were given in

the departmental instructions book were not followed. Thirdly, it was held by the Courts below that the co-conductor in the bus had supported the delinquent. The Apex Court in the facts of the said case held that in a domestic inquiry, strict rules of evidence under the Indian Evidence Act will not apply and therefore, held that merely because the statements of other witnesses were not examined, that could not be a ground for not accepting the testimony of the inspector and on that ground set aside the orders passed by the High Court and the lower Courts and confirmed the order passed by the Inquiry Officer. It was strenuously urged that therefore, the Industrial Tribunal ought not to have discarded the testimony of Shri S.T. Suryavanshi who had in term stated that the respondent had given him a packet for delivering it at his residence which contained Rs. 10,000/-. In my view, the ratio of the said case will not apply to the facts of the present case because the Tribunal has not set aside the finding of the Inquiry Officer only on the ground that the other witnesses were not examined. The Tribunal on the contrary after having applied its mind and appreciated the evidence of S.T. Suryavanshi had disbelieved his testimony. The Apex Court in *State of Haryana and Anr. v. Rattan Singh* (supra) had observed that in domestic inquiry, it is not necessary to follow the strict rules of evidence and therefore, had accepted the testimony of the inspector who had conducted the raid and who has stated that the passengers had declined to give their statement. The learned Counsel also relied on the judgment of the Apex Court in the case of *West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh* (supra). It was submitted that in the said case, it was observed that where two views are possible, the Industrial Tribunal should be very slow in interfering with the findings recorded in the domestic inquiry. He further submitted that the Apex Court had held that the standard of proof in domestic inquiry was of preponderance of probabilities and not proof beyond reasonable doubt. He invited my attention to paragraphs 17, 20 and 21. There cannot be any dispute about the ratio laid down by the said case. The facts, however, in the said case are slightly different. In the said case, there was evidence on record regarding indecent, riotous and disorderly behaviour of the respondent towards the superiors. This evidence was discarded by the Tribunal and it was observed that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. Under these circumstances, the Apex Court observed that the Industrial Tribunal had erred in discarding the evidence produced by the management only because witnesses were not produced and in the light of these facts had observed in paragraphs 20 and 21 as under:

20 The Tribunal has set aside the report of the enquiry officer and the order of dismissal passed by the punishing authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for, drawing up of a disciplinary proceeding against the delinquent. It is well-settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the

Standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

21. Learned Counsel for the respondent-cited two cases *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, : *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, and *The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others*, to contend that the Labour Court in exercise of its jurisdiction u/s 11-A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal.

The facts in the present case are different. Therefore, the ratio of the said judgment will not apply to the facts of the present case. In the present case, S.T. Suryavanshi who had alleged in evidence that the envelope containing Rs. 10,000/- was given by the respondent to him for delivering it at the residence of the respondent. Firstly, he made a complaint to the Branch Manager on September 27, 1991. This statement, therefore, was made almost after a lapse of 13 days. No explanation has been given as to why he had not informed the Branch Manager earlier more particularly when a complaint had already been filed by the Branch Manager in the police station against S.M. Jewellers. Secondly, the letter dated September 27, 1991 was written by S.T. Suryavanshi three days after the respondent who was the president of the registered trade union informed the bank that he was ready to pay the shortage of cash of Rs. 10,000/- in one installment though he had reiterated his stand that the shortage of cash was due to less amount being paid by the clerk of S.M. Jewellers. This disclosure by S.T. Suryavanshi after a lapse of 13 days and more particularly, three days after the respondent had written this letter creates a doubt about the veracity of his statement. The tribunal after having examined his evidence has observed that his testimony was unacceptable. The tribunal is entitled to re-appreciate the evidence and see whether the finding recorded by the Inquiry Officer is perverse or not. In the present case, therefore, in my view, the Tribunal was justified in recording the said finding. Under these circumstances, in my view, no case is made out by the petitioner for interfering with the finding recorded by the CGIT.

12. Writ Petition, accordingly, is dismissed. Rule is discharged.