
(2014) 05 DEL CK 0356

In the Delhi High Court

Case No : LPA 467/2013

Dinesh Chandra Sharma

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0356

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : K. Venkataraman, Advocates for the Appellant; Naveen R. Nath and Shravan Sahny, Advocates for the Respondent

Judgement

Gita Mittal, J.—The petitioner has assailed the order dated 11th July, 2012 passed in W.P.(C) No. 1037/1998 whereby the learned Single Judge has rejected the challenge to an industrial award dated 21st April, 1997.

2. The facts giving rise to the present appeal are within the narrow compass and to the extent relevant, are briefly noted hereafter.

3. The appellant before us was employed as a cashier in the Canara Bank. A charge memo dated 18th September, 1990 was issued to him which sets out all the allegations against him and therefore deserves to be set out in extenso. The same reads thus:

"While working at Nehru Place branch, he had been maintaining a saving bank account no. 748. On 12th September 1990 the Clerk handling the particular SB ledge (Staff I) had reported to the Manager of the branch having found the ledge folio of SB Account no. 748 torn and partly destroyed. An investigation was conducted into the matter and it had been found that the upper part of the ledger folio was found torn and removed. The torn part of the folio was containing entries for the period from 30th August 1990 onwards and the ledge had been handled by the CSE amongst others on 30th August, 1990. The investigation further revealed that on 30th august, 1990 while handling thee

ledger the CSF had made two credit entries viz. Rs.1111.20 being the salary for August, 1990 which had been already credited in the account and Rs.3180.00 being the proceeds of SWF loan. As on 31st October, 1990, the closing balance in the account should have been Rs. 1170.99 whereas the same was arrived at Rs.10,170.99 as reflected from the balancing book. Between the period 1st September, 1990 and 8th September, 1990 the CSE had withdrawn an amount to the extent of Rs.9,000/-from the account utilizing 5 cheque leaves. The balance in the account, and the same could be facilitated only by inflating the balance from Rs. 1170.99 to Rs.10170.99 which the SE had made fraudulently. Despite knowing that the balance reflected in his account was not correct by inflicted, he had withdrawn the amount successively. In order to cover up his lapse, he had caused damage to the ledger folio. The CSE had also admitted before the investigating officers that the second posting towards salary for August, 1990 had been made by him and also that the withdrawals were made by him. He had also agreed to reimburse to the extent of Rs.3500/- out of the wrong withdrawal made by him in his account and had reimbursed an amount of Rs.2,000/- on 15/9/90. By his above fraudulent acts he had caused damage to the property of the bank, thereby committed a gross misconduct within the meaning of Chapter XI Regulation (3) clause (M) of Canara Bank Service Code."

4. The appellant had been placed under suspension as disciplinary proceedings against him were proposed. The Canara Bank appointed an Enquiry Officer who conducted a detailed enquiry against the appellant on the aforesaid charges. Documentary and oral evidence was placed during the enquiry. The enquiry officer formulated the following points for consideration which were considered by him:

- a) Whether the CSE had himself inflated the balance in his savings bank account.
- b) In order to cover up his lapse, whether he had torn off the ledger sheet.

5. After analysis of the evidence on record and consideration of the matter, the Enquiry Officer submitted a report dated 11th April, 1991 finding the appellant guilty of the charges on which the enquiry had been conducted. Learned counsel for the petitioner has challenged the recommendation of the Enquiry Officer not on any issue involving lack of evidence but has submitted that the Enquiry Officer exceeded his jurisdiction inasmuch as he proceeded to recommend imposition of punishment or dismissal from service upon the petitioner.

6. It appears that the appellant was given an opportunity to appear before the Enquiry Officer for the purpose of quantum of punishment. In this regard the Enquiry Officer passed further order dated 11th April, 1991 recommending imposition of previous punishment of dismissal.

7. This recommendation of the Enquiry Officer was placed before the Disciplinary Authority. The order dated 11th April, 1991 has noted that the appellant appeared before the Enquiry Officer on 10th April, 1991 and acknowledged receipt of the enquiry report dated 23rd March, 1991.

8. Learned counsel for the appellant has submitted before us that the disciplinary authority did not issue notice to show cause with regard to imposition of punishment upon him. It is admitted before us that the appellant received recommendation of the Enquiry Officer and made submissions before him which have been noted in the order dated 11th April, 1991. The Enquiry Officer has set out the entire contentions of the appellant with regard to imposition of punishment in the following terms:

"..... Accordingly the C.S.E. appeared before me on 10/4/1991 and acknowledged having received the findings dated 23/3/1991 and understood its contents. He has given a letter which has been taken on record. In his letter the C.S.E. has stated that he had joined the services of the bank in 1976 and had worked with utmost sincerity and devotion under many supervisors without any complaint against him. He has informed that he is the only earning member in his family and has four children to look after, and that the proposed punishment is too harsh and if imposed will put his entire family in hardship. As such he has requested to reconsider the punishment and give him a chance to serve the institution with all sincerity and devotion."

(underlining by us)

9. The recommendations dated 11th April, 1991 were placed before the Disciplinary Authority who considered them in detail. It is apparent from the above that there is compliance with the requirement of grant of the opportunity with regard to the punishment which may be imposed on a delinquent employee by the disciplinary authority. The appellant has contended that he had not placed his case with regard to the imposition of the punishment. However, the order dated 11th April, 1991 has noted the representation of the appellant urging mitigation of the seriousness of the allegations against the appellant is concerned.

10. The Disciplinary Authority agreed with all recommendations of the Enquiry officer and accepted the same vide order dated 1st May, 1991. The order of the Disciplinary Authority was assailed by the appellant before the Appellate Authority and the appeal was rejected vide order dated 26th July, 1991.

11. Mr. Venkataraman, learned counsel appearing for the appellant has submitted that it was incumbent upon Disciplinary Authority to record reasons in support of its order. It is trite that in case the Disciplinary Authority is agreeing with the recommendation of the Enquiry Officer, the necessity of recording detailed reasons for the same is obviated.

12. The findings of the Enquiry Officer which have been sustained by the Appellate Authority and the Disciplinary Authority are based on oral and documentary evidence placed on record. We may note one more material fact which supports the impugned orders; the enquiry report dated 23rd March, 1991 records that the appellant had confessed having taken an amount aggregating to Rs.9000/- knowing fully well that this money was not belonging to him and also of having made the second entry in the ledger pertaining to his salary for the

second time. He had given a written statement which was exhibited before the Enquiry Officer as 5 and 5A and had agreed to reimburse the amount to his employer.

13. The dispute raised by the appellant was referred to the Industrial Administrator on the following reference:

"Whether the action of the management of Canara Bank in dismissing the services of Sh.D.C. Sharma is justified? If not, to what relief the workman concerned is entitled to?"

The reference was rejected by the Industrial Award dated 21st April, 1997 which was rejected on 27th May, 1997.

14. The learned Single Judge has upheld the industrial award. No reason has been pointed out which enables us to take a contrary view to the findings recorded by the Industrial Award upheld by the Single Judge. We find no merit in the appeal which is hereby dismissed.