
(1989) 08 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11392 of 1988

D.N. Dhingra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-08-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1993) 3 LLJ 732

Hon'ble Judges : Harbans Singh Rai, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Mohinder Gupta and Vivek Bhatia, for the Respondent

Judgement

Harbans Singh Rai, J.—D.N. Dhingra, petitioner, has filed this petition seeking a direction to respondent 1, Union of India, for referring the industrial dispute raised by him for adjudication to the Industrial Tribunal.

2. The petitioner was appointed as a steno-typist on 28 July 1977, in Punjab National Bank. He was promoted to the post of special assistant on 14 August 1984, and was posted at Nehla, District Hissar. He was again promoted as an Accountant on 27 May 1985, and was posted at the same branch. While he was posted as special assistant at Nehla, he was charged with certain acts of omission and commission. The following five charges were levelled against him:

(1) Abused his official position and credited his own account by debiting the accounts of bank's customers and bank employees without their consent or authority.

(2) Misutilised the consumer loan of Rs. 5,900 raised for purchase of furniture.

(3) Misutilised the bank's funds for his own benefit by overdrawing his C/A (O/D) account on several occasions.

(4) Misappropriated the amount entrusted to him by the customers for depositing

in their accounts.

(5) Misutilised his official position and withdrew the amount from customer's account with forged signatures.'''

An enquiry officer was appointed. The petitioner was exonerated of charges (2), (4) and (5) and regarding charge (1), the enquiry officer 2 held it to be partly proved whereas charge (3) was held to be proved. Consequently, he was removed from service on 16 June 1986. His appeal against his removal was dismissed on 18 August 1986. The review petition was also dismissed on 20 February 1987.

3. As he had exhausted all the remedies provided under the rules, he raised an industrial dispute against his removal from service u/s 2A of the Industrial Disputes Act, 1947 (hereinafter called the Act). The Assistant Labour commissioner (Central), respondent 3, made efforts of conciliation, but it failed and he communicated his failure report u/s 12(4) of the Act to the Union of India, respondent 1, vide -his letter, dated 1 February 1988. Respondent 1, the Union of India, rejected the application of the petitioner for making a reference of the dispute vide its order, dated 10 August 1988. Not satisfied with the rejection order, the petitioner submitted an application for reconsideration of the order which was rejected by respondent I on 13 October 1988.

4. The petitioner has sought quashing of the order passed by respondent 1 on 10 August 1988 (Annexure P3) rejecting his application for making a reference of the dispute and also for quashing the order passed on 13 October 1988 (Annexure P5), rejecting his application for reconsideration of the order.

5. The petitioner in his petition has stated that he is a workman and his duties were as under:

"(i) To enter inward letters/circulars in the receipt register and outward letters in the dispatch register.

(ii) To assist the customers in filling up the account opening forms, pay-in-slips, draft issue forms and other relative forms pertaining to their banking transactions.

(iii) To take dictation of letters/statememts from the officer-in-charge for correspondence with RM/HO/RBI/income tax Department.

(iv) To assist the officer-in-charge in preparation of statements/vouchers and maintaining certain registers.

(v) To prepare drafts, cash orders, TPOs, pensions and salary bills under the guidance of the officer-in charge.

(vi) To write cash book ledgers, deviation register and documents register.

(vii) To take down the balance of ledgers in the balance -books and tally thereof.

(viii) To check periodically entire cash and security forms, balance of sundries and suspense, bills, postage in hand.

(ix) Checking vouchers, advices, bills, returns, entries in books of account with the vouchers.

(x) Checking entries with vouchers in the current, savings, fixed deposit, recurring deposit and loan ledgers.

(xi) Check interest in deposit and loan ledgers.

6. The petitioner has prayed that as respondent 1 has declined to make a reference without any justifiable cause, the orders, dated 10 August 1988 (Annexure P-3) and dated 13 October 1988 (Annexure P-5), are liable to be set aside.

7. In the written statement, it is pleaded that the petitioner is not a workman and there is no case for making a reference of the dispute to Industrial Tribunal and the orders passed by the Central Government are perfectly legal and justified. The Punjab National Bank in its reply stated that the petitioner is an officer and not a workman. In reply to Para 10 of the petition wherein the petitioner has stated that he is a workman, the Bank replied as under:

"In reply to contents of Para. 10, it is submitted that at the relevant time the petitioner was posted as second man in the branch/pay office. To say it differently he was the second senior most person in the concerned office and was responsible for all the banking transactions taking place in the hall. As a general practice, the manager/officer-in -charge normally undertakes the responsibility of deposit mobilisation and credit portfolio and all other banking transactions are handled and supervised independently by the second man in the branch. The list provided by the petitioner is simply illustrative in some respects and not exhaustive. It is submitted that as the second man of the branch, Sri Dhingra, the petitioner was responsible for orderly conduct of the banking business in the banking hall and for maintenance of discipline in the office as well as supervising the functioning of all the staff, working in the hall during banking hours.""

8. I have heard the petitioner who is present in person and the learned counsel for the respondent at great length. Respondent 1, Union of India, while declining to make a reference, has not given any reasons. The translation of the order is in the following terms:

"In continuation of this Ministry's letter dated 6 April 1988, on the above subject I am directed to say that it appears that Sri D.N. Dhingra was an officer of the bank and the disciplinary action against him under the officers regulations is not covered (under the Industrial Disputes Act). Therefore, in the opinion of the Central Government, prima facie there is no dispute to be referred to the Industrial Tribunal for adjudication."

9. It is not disputed that whether a person is a workman or not is to be decided

by the nature of duties he is required to perform. The nature of duties performed by the petitioner and as given in Para 10 of the petition have not been denied by the Bank in its written statement. If the petitioner was doing the duties as mentioned by him in Para 10 of the petition, it cannot be said that he is not a workman.

10. As the petitioner is a workman, respondent 1, the Union of India, was not justified in declining to make a reference. Consequently, the order passed by respondent 1, the Union of India, dated 10 August 1988 (Annexure P-3), rejecting the application of the petitioner for making a reference of the dispute and the order, dated 13 October 1988 (Annexure P-5), declining to reconsider the order are set aside. It is directed that respondent 1, the Union of India, shall make a reference regarding the dispute of the petitioner to the Industrial Tribunal for adjudication. With this direction, this petition is allowed. There will be no order as to costs.