(1999) 09 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No. 24185 of 1991

Kumar C.A. APPELLANT

Vs

State Bank of Mysore and Another RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:

Citation : (2001) 3 LLJ 365

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.P. Mohan Kumar, J.—Petitioner herein challenges the award passed by the Central Industrial Tribunal in Reference No. 60/87, Annexure A and A1. Annexure A is the order passed on the preliminary issue and Annexure A1 is the final award. Annexure A relates to the validity of the domestic enquiry and by the said order the domestic enquiry was upheld. By Annexure A1 award the dismissal was also upheld by the Central Industrial Tribunal.

2. I have heard Sri Jagadeeshachari, learned counsel for the petitioner and learned counsel for the employer.

3. Petitioner was employed by the 1st respondent Bank as a clerical staff. While so, it is alleged that he had committed certain irregularities. With respect to the said misconduct the following charges were framed against the petitioner.

"i) You fraudulently withdrew or arranged to withdraw indirectly amounts aggregating Rs. 1,89,422.33 from 40 Agricultural Cash Credit Accounts in the following manner and misappropriated the same:

a) You posted 27 Agricultural Cash Credit withdrawal slips containing forged signatures in the respective ledgers in the accounts listed in Annexure A and withdrew or got withdrawn the amounts shown under column-5 and misappropriated the same;

b) You obtained or managed to obtain signatures/thumb impressions of borrowers on surplus Agricultural Cash Credit withdrawal forms from 13 farmer-borrowers in respect of Agricultural Cash Credit accounts listed in Annexure B and making fraudulent use of those surplus withdrawal forms. You withdrew or got withdrawn amounts shown under column-5 and misappropriated them.

ii) You posted fictitious credits in several Agricultural Cash Credit accounts as follows:

a) In respect of 26 accounts shown in Annexure C amounts shown under column-6 have been credited without any supporting vouchers;

b) In respect of 14 accounts shown in Annexure D amounts shown under column-6 have been credited on the basis of spurious vouchers prepared by you.

iii) You prepared 14 Agricultural Cash credit withdrawal forms for amounts aggregating Rs. 57,376.08 as listed in Annexure E and without posting them in the ledger, you got them passed by the then Manager of our Malavalli Branch, Shri K. V. Sathyanarayana Rao and misappropriated the said amounts by obtaining payment thereof fraudulently.

iv) With the ulterior motive of concealing your fraudulent acts.

a) You manipulated entries in the Agricultural Cash Credit progressive balance book; and

b) You manipulated entries in the day book pertaining to interest, commission and exchange accounts and the register of ''Interest'', Commission and Exchange Analysis.

v) With dishonest intention of concealing your fraud you unauthorisedly embossed the audit seal in the Agricultural Cash Credit Ledgers.

vi) You prepared false Agricultural Cash Credit ledger sheets and substituted them in place of the original sheets with the dishonest intention of concealing your fraud.

vii) Dishonestly and deliberately, you wrongly credited the amounts (shown under column 4 of Annexure F) of interest charged on several ''Agricultural Cash Credit and Agricultural Term Loan accounts'' to the other accounts shown under column-5 of Annexures C and D instead of rightly crediting them to the Branch Interest account."

4. A domestic enquiry was conducted with respect to these charges and at the domestic enquiry the worker was found guilty of the charges. On the basis of that finding punishment of dismissal was imposed on the worker. The worker raised a dispute and the same was referred to the 1st respondent for adjudication.

5. The Industrial Tribunal framed a preliminary issue regarding the validity of the domestic enquiry and after hearing the respective sides it upheld the validity of

the domestic enquiry. Thereafter it considered the validity and the propriety of the punishment of dismissal imposed with respect to the proved charges. The 1st respondent found the punishment of dismissal imposed is just and proper and it did not call for interference. The said award Annexure A1 is also challenged in this proceeding, by the worker.

6. Challenging the finding on the validity of the domestic enquiry the main contention of the learned counsel for the petitioner is that the worker did not have a fair opportunity to contest in that all the documents basing on which the charges were framed were not furnished to the petitioner. Particularly he contends that the allegation to begin with was that the petitioner had misappropriated Rs. 2 lakhs and accordingly charges were framed. But in Annexure B charge sheet the same has been reduced to Rs. 1,89,422.33. He points out that in a suit which has been filed by the employer-Bank against the petitioner seeking recovery of the allegedly misappropriated amount to recoup the loss sustained by the Bank the amount claimed is far less. According to him thus there is variation of the quantum of misappropriation as loss claimed by the Bank. Had, the documents basing on which the charges were framed were disclosed to the petitioner he could have highlighted these inconsistencies to show that the charge Annexure-B in this behalf is vague. The petitioner suffered, because the documents were not made available.

7. As regards the said contention concerned it is to be remembered that to begin with the alleged misappropriated amount was the subject matter of notice to the worker in the disciplinary proceeding. In that the Management had indicated the probable sum that appeared to have been misappropriated by the worker. To that show cause a reply was received from the petitioner as well. In all probabilities, the Bank would have verified the account with reference to the reply. The correctness of the amount misappropriated would have been thus examined then and thereupon, it would have been quantified in the charge sheet. As such, the variation of the amount mentioned in the charge sheet would have arisen thus and is not certainly a material defect going to the root of the matter. The documents in this behalf need not be made available to the petitioner. Secondly, the learned counsel contended that certain amounts were sought to be recovered by means of a civil suit and the subject matter of a suit claiming varied very much from the amount indicated in Annexure-B; therefore the present charges are described as vague. The short answer is, that before the Civil Court only debts which are not time barred would have been claimed. This amount may naturally vary with the amount made mention of in the charge sheet. As such, these allegations do not vitiate the charges.

8. The learned counsel next contend that the handwriting expert who examined the fictitious signature in the vouchers etc. has not been permitted to be cross examined by the delinquent worker and that the handwriting expert''s opinion has not been furnished to him as well. I do not find from the charges, that much turned on the report of the handwriting expert alone. The charge shows that they

are matters to be gone into in evidence to be tendered at the time of domestic enquiry. There is no case that the witnesses were not examined in the presence of the delinquent to prove the charges. As regards the alleged fictitious signature which was examined by the handwriting expert which has been referred to in, the domestic enquiry, that report was as a matter of fact furnished to the petitioner as well. There can be legitimate apprehension entertained by the employee that if the details of the report are furnished to the petitioner before hand, he may tamper or manipulate the documents and interfere with the witnesses. As such strictly speaking these documents need not be furnished to the worker and the said conduct of the employer has not prejudiced the worker.

9. That apart petitioner is aware of the fact as to what are the discrepancies pointed out in the show cause notice issued to him with respect to which the charges were framed against him. As such the contention of the petitioner that certain documents prayed for by him have not been supplied has no substance.

10. Further in respect to the abovesaid allegation that certain documents were not given to the petitioner, it is seen from the record that in response to petitioner''s request in this behalf namely, Annexures B1 and B2, a reply Annexure B3 has been issued by the management. It categorically stated therein the reason why the documents sought for by the petitioner could not be made available. As a matter of fact as stated therein, documents listed as Item Nos. I: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in Annexures B1 and B2 were destroyed by the petitioner himself and several ledger sheets were replaced with duplicate sheets after making entries in fictitious names for credits and debits by the petitioner. These fraudulent payments are made by the petitioner in an attempt to conceal the fraud played by him and he is very much aware of the same. As such, the petitioner is attempting to take advantage of a situation brought about by him, by complaining that, the documents were not furnished to him. This reply clearly explains as to why the documents were not made available. In view of the circumstances, I am of the view that the Management is justified in turning down the request of the petitioner to produce the documents.

11. The next contention of the petitioner''s counsel is that the documents referred to in Item Nos. V and VI with respect to the CBI report has not been furnished to the worker. In this behalf the Management stated that these are irrelevant documents vis-a-vis the charges and that as they are confidential in nature and the charge sheet was not based on these reports but on the investigation report of the Auditor Shri H. D''Souza who has been examined there is no need to furnish the report. This is a proper reason to turn down the request of the petitioner and by not furnishing a copy of the report, the petitioner has not in any way suffered. I am of the view that the Management is justified in not giving these documents and therefore the contentions raised by the learned counsel in this behalf has to be rejected.

12. The learned counsel further contented that there is no evidence to show that the petitioner was found guilty of the charges. This contention also has to be

rejected. At the domestic enquiry there was a detailed consideration of the evidence with respect to the charges and as there was evidence the petitioner was found guilty. The evidence considered, cannot be said to be insufficient to find the charges. The domestic enquiry did not find the worker guilty of the charges without any evidence. The evidence on record it is held is sufficient to find him guilty. The finding as such is not perverse. Besides, there is no specific case in the writ petition that the finding of the domestic enquiry is perverse in any manner. As such one cannot presume that the finding of the domestic enquiry is perverse and on that basis an attempt to reappraise evidence. If the domestic enquiry held is proper and findings are not perverse, the next question would be what should be quantum of punishment to be imposed. In this behalf the Management has categorically stated that the petitioner has committed misappropriation by committing forgery and if he is allowed to continue in the bank it will suffer greater loss and as such it has lost confidence in the employer. In view of such circumstances the Management decided that the worker should not be reinstated. There is no illegality in the punishment awarded. Therefore the impugned order and award of the Labour Court does not call for interference. The writ petition is dismissed accordingly.