
(2007) 04 DEL CK 0014

In the Delhi High Court

Case No : Writ Petition (C) No. 9379 of 2006

Ramesh Kumar

APPELLANT

Vs

The Regional Manager, Punjab National Bank

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21
Negotiable Instruments Act, 1881 (NI) — Section 78

Citation : (2007) 137 DLT 593 : (2007) 1 DMC 553 : (2007) 3 LLJ 89

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Kamal Sharma, for the Appellant; Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioner has filed the present writ petition impugning the Award dated 3rd December, 2004 passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as 'the Industrial Adjudicator') in ID No. 84/94. The facts of the case as stated by the petitioner are that the petitioner was appointed as a Clerk in the respondent Bank on 15th November, 1985 vide a letter dated 21st October, 1985. On 31st December, 1989, a written complaint was lodged by a customer of the respondent Bank against the petitioner, pursuant to which the petitioner was served with a charge sheet in the following terms by the respondent Bank stating that he had received two cheques of Rs. 3,000/- each and had contravened the procedures of the respondent Bank:

(i) You did not affix Bank's crossing stamp partly on the counter foil and partly on the relevant voucher, in lieu of having received the voucher along with cheques.

(ii) You did not sign the counter foil in lieu of having received the instrument.

(iii) You did not enter these cheques in the outward clearing register.

2. Another complaint was also made against the petitioner with respect to misappropriation of a cheque of Rs. 5,000/- by him.

3. After receiving the aforementioned complaint from the customer, the Branch Manager of the respondent Bank lodged a written complaint with the police station on 9th April, 1990. On 23rd May, 1990, the petitioner was served with a letter of suspension. The respondent Bank conducted a departmental enquiry against the petitioner. On the report of the departmental enquiry being placed before the Disciplinary Authority, it imposed a punishment of dismissal from service on the petitioner. An opportunity of hearing was afforded to the petitioner but in view of the facts and circumstances of the case and gravity of the charges, punishment of dismissal was maintained against the petitioner. The appeal preferred by the petitioner was also rejected by the Appellate Authority.

4. Aggrieved by the aforesaid action of the respondent Bank, the petitioner raised an industrial dispute. Vide order dated 26th July, 1994, the Ministry of Labour, Central Government referred the following point for adjudication:

Whether the action of the management of PNB, New Delhi in dismissing Sh. Ramesh Kumar, Clerk from service w.e.f. 1.11.93 is justified? If not, what relief the said workman is entitled to.

5. The petitioner filed his claim petition stating inter alia that the allegations leveled against him were false; that he had neither pilfered two cheques of Rs. 3,000/- each, nor had he misappropriated the third cheque of Rs. 5,000/-. It was stated that two preliminary enquiries were conducted against the petitioner, the first one on 18th February, 1990 and the second on 7th April, 1990, during which period, the petitioner was forced to sign on blank papers by the respondent Bank under the pretence of tallying his signatures with the signatures made on the cheques which had been encased from a branch of the State Bank of India. It was further claimed that a conspiracy had been hatched against the petitioner and that the Inquiry Officer appointed by the respondent Bank did not give ample opportunity to the petitioner to defend his case.

6. The respondent Bank filed its written statement to the claim petition wherein all the allegations leveled by the petitioner were denied. It was stated that the respondent Bank had taken disciplinary action against the petitioner for gross misconduct in accordance with the provisions of the bipartite settlement governing the Bank which deals with disciplinary action against the employees who commit acts of misconduct. It was asserted that an opportunity of personal hearing was afforded to the petitioner and that the enquiry had been conducted in accordance with the principles of natural justice and that during the enquiry, the petitioner chose to remain absent on most of the dates without information and out of a total of fourteen (14) dates of enquiry, he had remained absent on more than half the dates. It was also stated that an FIR was lodged by the respondent Bank regarding pilferage of the two cheques.

7. After the pleadings were completed, arguments were addressed by both the parties.

8. The Industrial Adjudicator looking at the material placed on the record and the law as cited by both the parties, arrived at a conclusion that the petitioner had willfully and deliberately avoided to participate in the enquiry proceedings. This compelled the Inquiry Officer to proceed ex-parte against him, for which act the petitioner cannot blame the respondent Bank. It was further observed that the ex-parte enquiry had been held properly and that the petitioner had been afforded proper opportunities to cross-examine the witnesses and to produce his own evidence but he chose to run away from the enquiry. The findings of the Inquiry Officer to the effect that while the petitioner was posted with the respondent Bank for receiving the cheques for collection from the outside Banks, he received the cheques and got the same encashed, thus causing loss to the respondent Bank and its customers and loss of trust in him and that the same was a sufficient ground to hold that where an employee posted on such a post is found wanting in integrity, he should not be continued any longer, were confirmed by the Industrial Adjudicator. With the aforesaid findings, the Industrial Adjudicator arrived at a conclusion that the enquiry was fair and just and that the petitioner was not entitled to any relief. Aggrieved by the aforesaid Award, the petitioner has filed the present writ petition.

9. Counsel for the petitioner submitted that no reasonable opportunity was granted to the petitioner to defend his case and that the Inquiry Officer appointed by the respondent Bank was not a duly appointed officer under the bipartite settlement governing the Bank and its employees. It was further submitted that the petitioner was only given verbal orders to receive cheques and because he was not officially holding the post, he could not be faulted for any lapse. It was stated that since ultimately the respondent bank was not held responsible and did not face any civil liability, no action ought to have been taken against the petitioner in terms of the enquiry. It was also averred by the petitioner that in view of the fact that the petitioner was given a clean chit in the criminal case filed against him, the present departmental proceedings against him ought to have been dropped. Reliance in this regard is also placed by the counsel for the petitioner on the order dated 6th June, 1998 passed by the Metropolitan Magistrate in FIR No. 359/90 by which the case was closed by the trial court. It was further contended that the enquiry was bad inasmuch as the Inquiry Officer did not adopt the proper procedure as required in law for conducting the enquiry. Counsel for the petitioner referred to the provision of Section 21 of the General Clauses Act, to state that only lawful commands given by the superior officers can be complied with. He also sought to rely on the provision of Section 78 of the Negotiable Instruments Act, to state that since the Bank incurred no liability and was not responsible in view of the fact that the said cheques were bearer cheques, the action of the petitioner cannot be faulted.

10. Counsel for the respondent who appeared on advance notice, disputed the

contentions as raised by on behalf of the petitioner and submitted that the enquiry conducted by the respondent Bank was in accordance with the principles of natural justice and the same was conducted in a fair and just manner, which fact has also been noticed in the impugned award. It was further submitted that the findings of the Industrial Adjudicator were based on the enquiry proceedings which were found to be held properly and due opportunity of hearing was afforded to the petitioner and the petitioner cannot be heard to say that the enquiry proceedings were vitiated by failure to follow the principles of natural justice when the petitioner himself chose to remain absent from the enquiry proceedings on a number of dates and failed to participate in the said proceedings. It was further submitted that this is not a case where there was a clear cut acquittal order passed in favor of the petitioner but it is simply a case where the criminal case filed against the petitioner was closed and same is not a sufficient ground to interfere with the proceedings of the domestic tribunal. It was urged that in any case the respondent Bank is not concerned with the criminal trial as the standard of proof required in a criminal case is entirely different from the standard of proof required to be given in a departmental proceeding.

11. I have heard the counsels for the parties. I have given my thoughtful consideration to the rival contentions made by counsels for the parties.

12. The records reflect that despite the fact that the petitioner was called upon to participate in the enquiry proceedings, he chose to keep himself away from the said proceedings. It is specifically mentioned in the impugned Award that the petitioner did not participate in the enquiry proceedings willfully and deliberately so as to escape the enquiry and when the enquiry was held ex-parte, he leveled allegations of violation of natural justice as against the respondent Bank. After giving the said finding, the Industrial Adjudicator rightly held that if the petitioner runs from the enquiry or deliberately and willfully avoids the proceedings of the enquiry, then for the said reason, the ex-parte enquiry is not to be set aside. The records reflect that repeated adjournments were sought by the petitioner during the enquiry proceedings and he chose to remain un-cooperative during the said proceedings. The claim of the counsel for the petitioner that in the impugned Award, at one place, the number days of his absence have been recorded as eight (8), whereas at another place, the same have been recorded as nine (9), is hardly material. This would amount to splitting hair as the fact still remains that out of 14 dates given before the Inquiry the petitioner remained absent on over half the dates.

13. Coming to the other contention of the counsel for the petitioner that the Inquiry Officer was not duly appointed under the bipartite settlement and his appointment was bad, the same is also a bald claim made by the petitioner and remains unsubstantiated on the record as the petitioner has failed to indicate as to which provision of the bipartite settlement was flouted by the respondent Bank by appointing the aforesaid Inquiry Officer.

14. The claim of the petitioner that since no instructions were given to him by the respondent Bank in writing and since he had received verbal orders, hence his acts cannot be faulted, is devoid of merits. In the normal course of service and in administrative exigencies of service, it cannot be claimed that each and every job is to be entrusted to an employee by the employer only by issuing written instructions so as to bind him. Hence, reliance placed on the provisions of Section 21 of the General Clauses Act by the petitioner is untenable and misconceived.

15. The claim of the petitioner that because he was given a clean chit by the investigating officer in the criminal case hence the proceedings held by the domestic tribunal ought to have been dropped by the respondent Bank, is also devoid of merits. The Industrial Adjudicator has rightly held that both the proceedings are different in nature. In a criminal case the charges against an accused have to be proved to the hilt and beyond reasonable doubt, whereas in departmental proceedings the charges are to be proved by preponderance of probabilities. In any case, as observed in the impugned Award, the petitioner was not acquitted of the charges but the case was closed and the order passed by the Metropolitan Magistrate was one of discharge of the petitioner and not that of acquittal. This factor is extremely relevant in rejecting the contention of the counsel for the petitioner that merely because he was not found guilty in the criminal case pending against him, the proceedings in the departmental enquiry ought not to have been taken any further by the respondents No. 2 to 4.

16. It is well settled that the approach and the objective in criminal proceedings as against disciplinary proceedings, are distinct and different. As held by the Supreme Court in the case of Lalit Popli Vs. Canara Bank and Others, , the preliminary question in disciplinary proceeding is that whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is that if the offences registered against the accused are established, then what would sentence should be imposed upon him. Thus the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different and the doctrine of "proof beyond doubt" has no application in the disciplinary proceedings.

17. Lastly, it may be observed that the Award passed by the Industrial Adjudicator is based on appreciation of the facts and the material on the record, including the findings of the Inquiry Officer, as also on the appreciation of documents before the Industrial Adjudicator and that this Court ought not to interfere in the said findings of fact while exercising its power of judicial review.

18. It has been held in innumerable judgments rendered by the Supreme Court and this Court, that the jurisdiction under Article 226 of the Constitution of India is discretionary in nature and this Court is ought not to re-appreciate the evidence, except within parameters well established in law; as long as the material which is relevant for the purposes of arriving at a finding has been duly considered by a tribunal or Labour court and is considered sufficient for recording

the conclusions in the Award, the same cannot be disturbed on the ground of insufficient evidence or material or because a different view than that taken by the tribunal or the labour court could be taken on the basis of the same material. The courts in exercising powers of judicial review ought not to pick holes in the awards so as to frustrate the entire adjudication process before the tribunal but attempt should be made by the courts to sustain the Award as far as possible. The courts also ought not to interfere with the Award only to make out a legal point unless the same on the face of the record, is patently perverse and erroneous and is based on gross mis-appreciation of facts or is contrary to the law. In this regard, reference may be made to the following judgments:

(i) *Sadhu Ram v. Delhi Transport Corporation* AIR 1984 SC 1967

(ii) *Harbans Lal Vs. Jagmohan Saran*,

(iii) *Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others*,

(iv) *Indian Overseas Bank v. I.O.B. Staff Canteen Workers" Union and Anr.* AIR 2000 SC 1508.

(v) *State of U.P. and Others Vs. Raj Kishore Yadav and Another*,

19. By referring to the aforesaid judgments, it comes out clearly that while exercising jurisdiction under Article 226 of the Constitution of India, this Court cannot act as an appellate authority over the findings of the Industrial Tribunal/ Labour Court. The scope of judicial review is limited to correcting the errors of law or procedural errors leading to injustice and violation of principles of natural justice. This Court can neither substitute its own finding with that of the Tribunal / Labour Court, nor can it re-appreciate the evidence to distinguish the findings of the Disciplinary Authority from those arrived at by the Tribunal/Labour Court.

20. In the light of the above discussion, it follows that no grounds have been made out so as to warrant any interference with the impugned Award by this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India. The Industrial Adjudicator rightly abstained from disturbing the findings recorded by the Inquiry Officer and the consequent order of punishment of dismissal from service imposed on the petitioner. As noticed hereinabove, the charges against the petitioner were very grave in nature. Considering that the charges were of mis-appropriation of funds and pilferage of cheques, the complete loss of trust by the respondent bank in the petitioner is not without reason. The relationship between a bank and its customer is very fragile and is based mainly on trust and good faith reposed in a Bank, which is only a trustee of the funds of a customer and such faith if shaken by any misconduct on the part of an employee of the Bank, is sufficient ground for loss of confidence and for taking a serious view against the delinquent employee as has been done by the respondent Bank in the present case by terminating his services.

21. In view of the aforesaid facts and circumstances, the writ petition is dismissed as being devoid of merits. Parties are left to bear their own costs.