

(2003) 07 AHC CK 0150
In the Allahabad High Court
Case No : C.M.W.P. No. 36051 of 1997

Standard Chartered Grindlays Bank	Vs	APPELLANT
Presiding Officer, Central Government Industrial Tribunal and Others		RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 3 LLJ 490

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : S.B. Gupta and R.P. Agarwal, for the Appellant; S.D. Kautilya, for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal, J.—By means of the present writ petition, the petitioner ANZ Grindlays Bank plc, now Standard Chartered Grindlays Bank, seeks a writ, order or direction in the nature of certiorari quashing the order dated March 7, 1997 and the award dated August 28, 1997 passed by the Central Government Industrial Tribunal, Kanpur, the respondent No. 1, in Industrial Dispute No. 81 of 1992.

2. By means of the order dated March 7, 1997, the Tribunal had decided the preliminary issue as to whether the domestic enquiry conducted by the management was not fair and proper in favour of the workman, the respondent No. 2, by holding that the enquiry officer was not properly appointed and further the domestic enquiry was not conducted in a fair and reasonable manner as the workman was not afforded full opportunity to defend himself. The Tribunal vide its award dated August 28, 1997 had held that the dismissal of the workman based on the charge sheet dated January 27, 1988 is bad in law and he is entitled for reinstatement with back wages.

3. Briefly stated the facts giving rise to the present petition are as follows:

The petitioner is a foreign bank and is carrying on its banking activities in India with the permission of the Reserve Bank of India. It has several branches including the one at Kanpur. On January 12, 1988 an unfortunate incident took place in which the respondent No. 2 workman had manhandled one Mr. P.K.Seth, an officer of the said branch, by slapping him on the face and pulling his tie. According to the petitioner, this incident was preceded by some abusive language used by the two other employees of the bank. The petitioner suspended the respondent No. 2 on January 15, 1988 and issued a charge sheet on January 27, 1988. The relevant portion of the charge sheet is reproduced below:

".... The moment Mr. Sharma went out you along with the outsider pulled Mr. Seth's tie from his neck and man-handled and slapped him resulting in his spectacles being broken and he also got a bruise on his left eye. The above said acts on your part if proved will constitute the following gross misconduct: under paragraph 19.5 of the Bipartite Settlement dated October 19, 1966 which reads as under:

19.5(c) drunkenness or riotous and disorderly or indecent behaviour on the premises of the Bank and,

(d) Doing any act prejudicial to the interest of the Bank, and you are hereby charged with the above gross acts of misconducts."

4. The petitioner appointed Mr. N.V.Srinivasan, Personnel Training Officer, Office of the General Manager, Eastern India, as the enquiry officer. Before the enquiry officer, both the petitioner and the respondent No. 2 produced their witnesses and other documents in support of their respective claims. A preliminary objection was raised by the respondent No. 2 regarding the appointment of the enquiry officer on the ground that under Paragraph 19.14 of the Bipartite Settlement, the Chief Executive Officer of the petitioner bank in India had nominated various officers for holding the departmental enquiry and since the bank in question is located at Kanpur, it falls under the northern region and any officer of the northern region who has been so nominated, can alone be appointed as the enquiry officer. On merits also, the respondent No. 2 pleaded that he is not guilty as no such incident took place. The enquiry officer overruled the preliminary objection and proceeded with the enquiry and after examining the evidence on record, held the respondent No. 2 guilty of the charges framed against him. The disciplinary authority after considering the reply and the enquiry report imposed the punishment of dismissal without notice. It also sought approval of the Central Government Industrial Tribunal at Bombay. The order of dismissal was passed on August 22, 1991. The appeal filed by the petitioner did not meet with any success. The Central Government Industrial Tribunal at Bombay also gave its approval.

5. On an application made by the respondent No. 2, the Government of India, Ministry of Labour, New Delhi, referred the following industrial dispute to the

Central Government Industrial Tribunal for adjudication:

"Whether the action of the management of ANZ Grindlays Bank plc, Kanpur in dismissing Sri R.C. Srivastava from service with effect from August 22, 1991 is justified? If not, to what relief the workman is entitled ?"

Before the Tribunal, the respondent No. 2 as also the petitioner submitted their statement of claim. Once again, a preliminary objection was raised by the respondent No. 2 regarding the appointment of the enquiry officer and holding of the domestic enquiry in a fair and reasonable manner. The Tribunal vide its order dated September 12, 1996 decided the preliminary issue by holding that the findings of the enquiry officer are not in accordance with the principles of natural justice and as such are held to be vitiated. It accordingly set aside the report giving liberty to the management to prove the misconduct on merits. The aforesaid order was challenged by the petitioner before this Court by filing Civil Misc. Writ Petition No. 33475 of 1996, which was allowed vide judgment and order dated January 8, 1997. The order dated September 12, 1996 was quashed and the Tribunal was directed to decide the issue afresh in the light of the observations made in the judgment. Pursuant to the aforesaid direction, the Tribunal once again decided the preliminary issue and came to the conclusion vide order dated March 7, 1997 that the appointment of the enquiry officer was not proper as no officer of the eastern region could have been appointed as the enquiry officer, in view of the order passed by the Chief Executive Officer of the petitioner bank in India and further, the enquiry was vitiated as the workman was not afforded full opportunity to defend himself.

6. Once again the order dated March 7, 1997 passed by the Tribunal deciding the preliminary issue was challenged by the petitioner before this Court by filing Civil Misc. Writ Petition No. 10204 of 1997 which was dismissed vide judgment and order dated March 21, 1997 leaving it open to the petitioner to challenge the finding if it is passed against it and the petitioner can while doing so also take all pleas which it has taken in this petition. The order dated March 21, 1997 passed by this Court was challenged by the petitioner by filing SLP No. 10305 of 1997 before the Hon'ble Supreme Court, which was dismissed by the Hon'ble Supreme Court vide order dated July 8, 1997 with the following observations:

"Apart from the fact that parties are stated to have led evidence before the Industrial Court, we might have been tempted to interfere. As it is, the petitioner can raise the plea taken in this petition in the challenge that it might have to make to the final award.

The SLP is dismissed."

7. Pursuant to the aforesaid order, the matter proceeded before the Tribunal on merits. The Tribunal by means of the award dated August 28, 1997 considered the evidence and material on record which was brought before it by both the parties and held that no such incident happened as alleged in the charge sheet on January 12, 1988 in the bank premises. It came to the conclusion that it may

be true that Mr. P.K.Seth might have been assaulted but certainly he was not assaulted or manhandled in the bank premises in the night of January 12, 1988. It might have happened some where else in connection with the family affairs as pointed in Exh, M2 of the memo of understanding. It further held that it had been made in the order to add gravity to the alleged misconduct and that the workman has been roped in just to get rid of him from the bank. The Tribunal held that the dismissal of the workman based on the charge sheet dated January 23, 1988 was bad in law and he was entitled to reinstatement with back wages. I have heard Sri S.P. Gupta, learned senior counsel, assisted by Sri R.P. Agarwal, on behalf of the petitioner and Sri S.D. Kautilya who represents the respondent workman.

8. Sri S.P.Gupta, learned senior counsel on behalf of the petitioner, submitted that the enquiry Officer had been properly appointed as under the Bipartite Settlement, Clause 19.14, the Chief Executive Officer was only authorized to appoint/nominate the disciplinary authority and it was left open to the disciplinary authority to hold the enquiry himself or to appoint any other person as the enquiry officer. He referred to paragraph 19.14 of the Bipartite Settlement as modified on October 31, 1979. The relevant portion of the said paragraph is reproduced below:

"The Chief Executive Officer or the Principal Officer in India of a bank or an Alternate Officer at the Head Office or Principal Office nominated by him for the purpose shall decide which officer (i.e., the disciplinary authority) shall be empowered to take disciplinary action in the case of each office or establishment. He shall also decide which officer or body higher in status than the officer authorized to take disciplinary action shall act as the appellate authority to deal with or hear and dispose of any appeal against orders passed in disciplinary matters. These authorities shall be nominated by designation, to pass original orders or hear and dispose of appeals from time to time and a notice specifying the authorities so nominated shall be published from time to time on the bank's notice board.

It is clarified that the disciplinary authority may conduct the enquiry himself or appoint another officer as the Enquiry Officer for the purpose of conducting an enquiry."

9. According to him, the circular dated January 19, 1988 and March 8, 1988 issued by the Chief Executive Officer of the petitioner bank in India nominating officers to hold enquiry and the disciplinary authority was only administrative in nature and no benefit can be derived by the workman from it. He submitted that the Bipartite Settlement is binding between the parties and has the force of law, which did not provide for nominating the enquiry officer by the Chief Executive Officer of the bank. Thus, he submitted that the enquiry officer appointed by the petitioner was in accordance with law and the view, to the contrary, is wholly illegal. He referred to a decision of the Hon''ble Supreme Court in the case of Central Bank of India Vs. C. Bernard, wherein the Hon''ble Supreme Court has

held that the enquiry officer need not be an officer of the bank and even a third party can be appointed as the enquiry officer to enquire into the conduct of an employee. According to him, if a stranger or a third person can be appointed as an enquiry officer, there was no illegality in appointing an officer of another region of the petitioner bank as an enquiry officer in the present case. He further submitted that the Tribunal has held the enquiry to be not fair only on the ground that the attendance/off hours register has not been produced. According to him, whatever register was available with the petitioner bank, had been produced and if the view of the Tribunal was that some other attendance/off hours register was there and had not been produced before the enquiry officer or before the Tribunal, at best an adverse inference could have been drawn but that would not vitiate the enquiry. Further, non-production of the register has not caused any prejudice to the workman. He relied upon a decision of the Hon''ble Supreme Court in the case of Oriental Insurance Co. Ltd. Vs. S. Balakrishnan, wherein the Hon''ble Supreme Court has held that unless prejudice is said to have been caused to the delinquent, non- supply of enquiry report cannot vitiate the entire proceedings, relying upon the Constitution Bench decision in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., He also relied upon the decision of the Hon''ble Supreme Court in the case of State of Tamil Nadu Vs. Thiru K.V. Perumal and others, wherein the Hon''ble Supreme Court has held that equally it is the duty of the Tribunal to record a finding whether any relevant document was not supplied and whether such non-supply has prejudiced the defence case. According to Sri Gupta, the Tribunal by holding that non-production of the attendance/off hours register has vitiated the entire enquiry without recording any finding that the respondent workman has been prejudiced by such an action and, therefore, the order of the Tribunal deciding the preliminary issue against the petitioner is liable to be set aside.

10. He further submitted that even if it is assumed for a moment, without admitting, that the domestic enquiry stood vitiated yet the Tribunal did not make any effort for summoning the attendance/off hours register, which was made the basis for the domestic enquiry to be vitiated and in its absence the Tribunal had erred in law in drawing inference that no such incident as alleged by the management took place in the bank premises on January 12, 1988. Even otherwise, he submitted that the Tribunal ought to have considered the material evidence which was before the enquiry officer in the domestic enquiry and it cannot be shut out. The Tribunal having failed to consider the material and evidence which were before the enquiry officer in the domestic enquiry, has committed a manifest error of law in giving the award in favour of the workman. According to him, back wages and reinstatement cannot be ordered as a matter of course. He relied upon a decision of the Hon''ble Supreme Court in the case of Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , wherein the Hon''ble Supreme Court has held that the payment of back wages, having a discretionary element involved in it, has to be dealt with in the facts and circumstances of each case and no straight jacket formula can be evolved

though, however, there is statutory sanction to direct payment of back wages in its entirety. He further submitted that it has come on record in the deposition of the respondent workman before the Tribunal that he has taken the loan from the Union Bank of India and has bought and is operating a taxi in his wife's name. Thus, he was gainfully employed and payment of back wages, in these circumstances, was not warranted. Sri Gupta further submitted that looking to the seriousness of the offence and the charges of misconduct, the Tribunal ought not to have allowed reinstatement of the respondent No. 2. According to him, the findings recorded by the Tribunal that no such incident took place are based on surmises and conjectures and cannot be sustained. Another submission which Sri Gupta advanced is that if it is held that the enquiry officer had been properly appointed and the domestic enquiry was not vitiated, in that event the Tribunal had to confine itself with the material and evidence on record and cannot take any further evidence. Thus, he submitted that on the basis of the material on record before the domestic enquiry, only one conclusion could have been arrived at, i.e., workman was guilty of the charges as he committed serious misconduct and the order of punishment should not be interfered. He relied upon a decision of the Hon'ble Supreme Court in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, where the Hon'ble Supreme Court has held that if its finding on the subject, i. e., the validity of the domestic enquiry, is in favour of the management then there will be no occasion for additional evidence being cited by the management and even in cases where the enquiry has been held by an employer and finding of misconduct has been arrived at, the Tribunal can differ in view of the provisions of Section 11A of the Industrial Disputes Act from that finding in a proper case and hold that no misconduct is proved.

11. Sri S.D. Kautilya, learned counsel for the respondent workman, however, submitted that the respondent workman was the General Secretary of the trade union in the bank and had refused the offer of promotion on the post of an officer of the bank just to serve the interest of the employees. He has been victimized. The management of the bank was all determined to get rid of the workman by all means and he has been framed in an incident which did not occur at all on the date mentioned, i.e., January 12, 1988, in the bank premises. He further submitted that there was no justification or occasion to get the approval of the dismissal order from the Central Government Industrial Tribunal at Bombay as no matter was pending before the said Tribunal. It was only to harass the respondent workman. On the validity of the appointment of the enquiry officer, he submitted that the Chief Executive Officer of the petitioner bank in India in his wisdom has nominated enquiry officers of the region to hold the enquiry in the particular region and, therefore, the appointment of an officer of the eastern region as an enquiry officer stood vitiated. According to him, the order of the Chief Executive Officer is binding and cannot be ignored. He relied upon paragraph 19.14 of the Bipartite Settlement dated October 19, 1966 and submitted that the aforesaid Bipartite Settlement which empowers the Chief

Executive Officer to nominate the enquiry officer, has not been modified by the Bipartite Settlement of 1979. Thus, he submitted that the enquiry officer had not been validly appointed. He further submitted that the enquiry officer was biased against the respondent workman and whole domestic enquiry proceeded in a biased manner. The enquiry officer did not provide a copy of the attendance/off hours register and further did not ask the management to produce the attendance/off hours register which, according to him, was being maintained by the petitioner. Thus, he submitted that the finding of the Tribunal on the preliminary issue does not call for any interference. On the merits, he submitted that the Tribunal had rightly come to the conclusion that no such incident took place on January 12, 1988 in the bank premises and, therefore, the respondent workman is not guilty of the charges of misconduct as alleged. According to him, the Tribunal has considered the material and evidence on record, which were the same which were before the enquiry officer in the domestic enquiry and, therefore, in view of the provisions of Section 11A of the Industrial Disputes Act, the Tribunal can come to a different conclusion. Thus, the award does not call for any interference.

12. Having heard learned counsel for the parties, I find that under paragraph 19.14 of the Bipartite Settlement entered into between the parties on October 31, 1979, which is binding between the parties u/s 18 of the Industrial Disputes Act, earlier paragraph 19.14 of the Bipartite Settlement dated October 19, 1966 has been modified. While in the 1966 Bipartite Settlement, the Chief Executive Officer of a bank was authorized to nominate the disciplinary authority as well as the enquiry officer, a departure has been made in the 1979 Bipartite Settlement restructuring the power of the Chief Executive Officer to appoint the disciplinary authority only leaving it open to the disciplinary authority to conduct the enquiry himself or appoint another officer as the enquiry officer for the purpose of conducting an enquiry. This provision of the 1979 Bipartite Settlement have the force of law and is binding between the parties. The enquiry officer has been appointed by the disciplinary authority. He is an officer of the bank though of another region. The letters dated January 18, 1988 and March 6, 1988 issued by the Chief Executive Officer of the petitioner bank nominating the enquiry officer cannot be said to have any force of law. It is only an internal arrangement and if, in its wisdom, the disciplinary authority thinks it proper to appoint another officer as an enquiry officer, no exception can be taken. The appointment of the disciplinary authority in the present case is not under challenge. Thus, the disciplinary authority was well within his right to appoint any person as the enquiry officer. The finding of the Tribunal that the appointment of the enquiry officer was not proper, in the circumstances, cannot be sustained.

13. So far as the question of bias alleged against the enquiry officer is concerned, suffice it to mention that the plea of bias was neither raised by the respondent workman before the enquiry officer in the course of the domestic enquiry nor before the Tribunal. In the absence of any such plea, it is not open to the respondent workman to raise the plea of bias at such a belated stage.

14. In this view of the matter, the order in so far as it holds the appointment of the enquiry officer as not proper cannot be sustained and is hereby set aside.

15. So far as the question of the domestic enquiry being vitiated as full opportunity to defend was not provided to workman is concerned, it may be mentioned here that before the enquiry officer the attendance/off hours register for the period August 1, 1987 to January 27, 1988 and another attendance/off hours register beginning May 13, 1988 was produced by the petitioner. The attendance/off hours register was also inspected by the respondent workman and even cross-examination of the management's witness was done on that basis. There was a specific deposition that no attendance/off hours register was maintained during the intervening period. Once a stand has been taken by the management that no attendance/off hours register was maintained during the intervening period, i. e., January 27, 1988 to May 12, 1988, there was no question of producing the same either before the enquiry officer or before the Tribunal. It was open to the Tribunal to come to the conclusion that the management is withholding the register and draw an adverse inference against the petitioner bank but if the same has not been produced, it does not vitiate the enquiry. Further, I find that the Tribunal has not recorded any finding on the question as to what prejudice has been caused to the respondent workman by not producing the attendance/off hours register. In view of the Constitution Bench decision of the Hon"ble Supreme Court in the case of Managing Director, ECIL, Hyderabad (supra), unless any prejudice is caused to the delinquent, non-supply of the enquiry report or any document cannot vitiate the entire proceedings. In this view of the matter, the order of the Tribunal insofar as it holds that the enquiry is vitiated for not providing full opportunity to the workman to defend cannot be sustained.

16. Now the question is as to whether the Tribunal can consider the evidence which it had permitted to be taken in the course of the hearing before it or not. As held by the Hon"ble Supreme Court in the case of Workmen of Firestone Tyre and Rubber Co. of India P. Ltd. (supra), since the domestic enquiry has been held to be proper and fair, no further evidence can be taken on record. All these evidence which have been considered by the Tribunal, were given before it after the finding that the domestic enquiry is vitiated. The Tribunal has not referred or taken into consideration the evidence which was before the enquiry officer in the domestic enquiry, which alone could be the subject matter of consideration. It is true that u/s 11A of the Industrial Disputes Act, the Tribunal can come to a different conclusion but that is to be based upon the evidence which has been brought on record before the enquiry officer in the domestic enquiry.

17. In view of the fact that I have come to the conclusion that the domestic enquiry was fair and proper and the Tribunal has not considered the evidence and material on record which was before the enquiry officer in the domestic enquiry, by holding that the workman had not committed any misconduct and the charges are not proved, the other questions on merits regarding

reinstatement with full back wages and the charges have been proved or not, are not being gone into by this Court.

18. In view of the foregoing discussions, the writ petition succeeds and is allowed. The order dated March 7, 1997 and the award dated August 28, 1997 are set aside. The Tribunal is directed to decide the case afresh in the light of the observations made above.