
(2019) 07 DEL CK 0428

In the Delhi High Court

Case No : Letters Patent Appeal No. 457 Of 2014

State Bank Of Bikaner & Jaipur

APPELLANT

Vs

S.K.Talwar

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 311(2)
Indian Penal Code, 1860 — Section 409

Citation : (2019) 07 DEL CK 0428

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : Rakesh Kumar Khanna, Anil Kumar Sangal, Siddharth Sangal,
Nilanjani Tandon, Atul T.N., Devendra Verma, Nitish Ojha

Final Decision : Dismissed

Judgement

G.S. Sistani, J

1. The challenge in this appeal is to the judgment of the learned Single Judge dated 13.05.2014, which arises out of an Award passed by the Industrial Tribunal-cum-Labour Court dated 29.05.2002.

2. The respondent/workman was appointed in the appellant bank on 21.07.1973. The incident pertains to 05.07.1983, when he was posted as Officiating Head Cashier at Naraina Industrial Estate, Phase I Branch of the Bank. The respondent had withdrawn a sum of Rs.2,07,500/- from the vault at 10.05 AM for usual cash transactions. On the same day, at 10.20 AM, the workman reported that bundles of Rs.100/- and 20/- were missing from the cash box kept on the right side of his Cabin to the tune of Rs.1,48,000/-. The appellant was called. FIR got registered and workman was taken into custody.

3. After a few days, on 09.07.1983, he was suspended. Disciplinary proceedings were initiated against him on 24.04.1984. The Management was represented and so also was the respondent. The Inquiry Proceedings came to an end on

16.10.1984. The Inquiry Report was submitted on 28.11.1984 to the Disciplinary Authority, who held that the charges stood proved. Pursuant to the Inquiry Report, the Disciplinary Authority issued a notice to the workman on 16.01.1985 asking him to show cause within ten days as to why punishment of dismissal from bank services be not imposed upon him.

4. In the meanwhile, by a judgment of 30.07.1988, the workman who was being tried under Section 409 IPC for the offence of criminal breach of trust was acquitted. The Disciplinary Authority, after taking into account the reply of the workman, dismissed him from service by an order of 16.12.1988. On an appeal filed, the punishment was modified from dismissal to termination from the bank's service by an order of 27.05.1989. Thereafter, the following dispute was referred to the Central Government Industrial Tribunal-cum-Labour Court for adjudication on 12.12.2019:

"Whether the action of the management of State Bank of Bikaner and Jaipur, New Delhi in dismissing the workman Shri S.K. Talwar vide their letter No.AGM/DAC/254 dated 16.12.1988 is justified? If not to what relief the workman is entitled to?"

5. The Tribunal by an Award of 29.05.2002, inter alia, held that the charges were vague; the Disciplinary Authority did not consider the acquittal of the workman by the Criminal court as also the domestic inquiry conducted against the workman was not fair and proper. The dismissal order was set aside. The respondent was directed to reinstate the workman with back wages, after deducting Rs.1,48,000/-, which was the missing amount.

6. The aforesaid Award was challenged by the Bank before the learned Single Judge of this court by filing a writ petition which has been dismissed and has led to filing of the present appeal.

7. Mr. Khanna, learned Senior Counsel submits that the order of the learned Single Judge is bad in law and is liable to be set aside. It is contended that the negligence of the respondent is writ large on the face of the record, for the reason that the respondent has not denied that on the fateful day, Rs.2,07,500/- of different denominations were withdrawn for disbursal. It was not disputed that there was a shortage of Rs.1,48,000/-. It was also not disputed that this cash was in the custody of the respondent and having regard to the fact that the Tribunal as also the learned Single Judge has directed return of this amount would show that the charge stands duly proved and once the charge is duly proved, neither the Tribunal nor the Court could have interfered in the punishment so awarded to the workman. It is also submitted that although there was electricity failure at the relevant time but there was enough light otherwise in the cabin of the Head Cashier because a special arrangement had been entered into with Payal Cinema and whenever the light failure occurred the electricity would be automatically generated in the Head Cashier's cabin through the generator set up by the cinema hall.

8. One of the grounds also raised is that the bank adopted a lenient attitude by giving the respondent an option to make good the loss but the learned Single Judge in para 13 of the impugned judgment went at a 'tangent'. It has also been submitted before us that the testimony of the bank remained unrebutted and on the other hand, no evidence was led by the workman. Mr. Khanna, learned Senior Counsel submits that it is an admitted position that opportunity to lead evidence was granted to the workman but he decided not to lead any evidence and also that the workman had addressed two subsequent letters to the Inquiring Officer dated 29.10.1984 and 05.11.1984, but did not complain of the inquiry being conducted in haste. It is, thus, contended that no benefit could have accrued in favour of the workman and the finding that principles of natural justice were not followed given by learned single Judge is erroneous and thus the view taken by the learned Single Judge that the inquiry stands vitiated on account of denial of reasonable opportunity to the respondent to lead evidence, is also illegal.

9. Mr. Khanna, learned Senior Counsel has also strongly urged before us today that the charge was framed against the workman as per the Bipartite Settlement dated 19.10.1996, under para 19.5(j), taking into account the fact that it has not been disputed that the act of the respondent was prejudicial to the interest of the bank. It was a case of gross negligence causing serious loss of Rs.1,48,000/- to the Bank. He submits that since the amount was entrusted to the respondent and was in his custody the onus shifted on him to prove as to how that amount was removed right under his nose from his Cabin and in the absence of any evidence led by him or in the absence of any explanation rendered by him, the Inquiring Officer rightly reached the conclusion that the respondent had shown gross negligence, which resulted in substantial loss to the Bank. He thus submits that there is no infirmity in the order dated 27.05.1989 by which the services of the respondent have been terminated.

10. Mr. Khanna, learned Senior Counsel has also contended before us that the law is well settled by a catena of judgments that the findings of the criminal court would have little or no bearing on the Departmental proceedings as in criminal cases, the charge has to be proved beyond any shadow of doubt, while in departmental inquiry, what has to be seen is the preponderance of probability. Thus, it is submitted that the learned Single Judge has erred in taking into consideration that the decision of the criminal court was not considered by the Inquiry Officer.

11. Mr. Khanna has also drawn the attention of this court to the Award of the CGIT, which we reproduce below:

"In view of the admitted fact of loss of bank money from possession of the workman and also his readiness to make good the loss, I feel that the ends of justice would be met if the loss of Rs.1.48 lakhs is recovered from him."

12. It is submitted that the Tribunal had no powers to quash the order of

termination dated 27.5.1989 as that is not the domain of the Tribunal and nor could it have entered into appreciation of evidence. Strong reliance is placed on para 10 of the judgment in the case of R.K. Solanki Vs. Central Bank of India, 2018 (4) M.P.L.J. 345, which reads as under:-

"10. In Bank of India Vs. Degala Suryanarayana (1999) 5 SCC 762, it is held by the Apex Court as under:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

13. Learned counsel for the respondent, per contra, submits that there is no infirmity in the order passed by the Tribunal or the learned Single Judge. It is contended that although the basic facts are not in dispute that the incident pertains to 05.07.1983 and it is not disputed that an amount of Rs.1,48,000/- was lost. It is however contended that in the departmental proceedings the only charge framed against the respondent was that he had not displayed proper vigilance in protecting the bank's cash, which resulted in loss to the tune of Rs.1,48,000/- to the bank and further, the respondent had acted in a manner highly prejudicial to the bank's interest and displayed gross negligence and gross misconduct. It is contended that there was no charge against the respondent either for embezzlement, theft or breach of trust. Once the bank did not frame any charge against the workman where the element of dishonesty was involved, then merely because the Tribunal and the learned Single Judge has allowed the bank to recover Rs.1,48,000/-, it would not ipso facto lead to conclusion that the amount was embezzled by the workman or he committed theft or illegally removed the amount to cause loss to the bank. The charge on the highest

leveled framed against the workmen was of negligence and accordingly, the punishment awarded of termination was not commensurate to the charge so framed, more so, having regard to the fact that the workman has joined as a clerk/typist in the year 1973 and had reached the post of Officiating Head Cashier in the Bank. Learned counsel submits that no reasonable opportunity was granted to the respondent to defend himself, which is evident from the fact that he was not given sufficient opportunity to lead his defence evidence. He submits that the opportunity granted was bare eyewash as on 16.10.1984, after the further examination of the representative of the bank was closed, the inquiry officer observed in the order that the defence had not submitted any list of witnesses or documents and since the representative of the respondent was caught unaware, no opportunity was granted.

14. We have heard the learned counsel for the parties and considered their rival submissions. To appreciate the submissions made by learned counsels, we deem it appropriate to reproduce the charge sheet dated 23.04.1984 as under:-

"(i) On the 5th July 1983, while Shri S.K. Talwar was working as Head Cashier at the Bank's Naraina Phase I, New Delhi branch, a sum of Rs.2,07,500/- in different denominations was withdrawn from the vault and handed over to him at about 10:05 A.M. and after duly receiving the aforesaid cash, only after two disbursements including the cash handed over to the teller, aggregating Rs.23,000/- at about 10:20 A.M. a shortage of Rs. 1,48,000/- (comprising 14 packets of Rs.100 notes and 4 packets of Rs.20 notes denominations) was detected in cash held in your custody. As custodian of cash you failed to make good the above shortage before the close of the business the same day. You were also advised by the Branch Manager vide his letters dated 05.09.1983 and 07.10.1983 to make good the aforesaid shortage but you failed to comply with these instructions of the Bank.

(ii) Thus you displayed extreme lack of vigilance in protecting the Bank's cash entrusted to you and held under your custody, which had resulted in a loss of Rs.1,48,000/- to the Bank and thereby acted in a manner highly prejudicial to the Bank's interests and displayed gross negligence involving the Bank in serious loss and committed gross misconduct under para 19.5 (j) of the Bipartite Settlement dated the 19th October 1996."

For a ready reference, para 19.5 (j) of the 1st Bipartite Settlement dated 19.10.1996 is also being extracted herein below:-

"19.5 By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) to (i)

j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(k) & (I)"

15. The following dispute was referred to the Central Government Industrial Tribunal-cum-Labour Court for adjudication:

"Whether the action of the management of State Bank of Bikaner and Jaipur, New Delhi in dismissing the workman Shri S.K. Talwar vide their letter No.AGM/DAC/254 dated 16.12.1988 is justified? If not to what relief the workman is entitled to?"

16. The argument of Mr. Khanna, learned Senior Counsel for the appellant can be summarized as under:-

a) That there is no infirmity or illegality in the order of the Disciplinary Authority and the Appellate Authority;

b) The learned Single Judge cannot sit as a court of appeal and the power of judicial review is meant to ensure that the workman had received fair treatment and not to assess as to whether the conclusion of the authority was correct in the eyes of law.

c) The decision of the Criminal Court would have no bearing on the inquiry proceedings;

d) In the absence of any defence evidence having been led and in view of the admission on record, that Rs.1,48,000/- was missing, which was entrusted to the respondent from his custody, the only conclusion which could be arrived at would be of gross negligence as loss was caused to the bank.

17. Mr. Atul T.N., in response, has submitted that there is no infirmity in the orders of the Tribunal and the learned Single Judge; principles of natural justice were not followed; no opportunity to lead evidence was granted. Merely because the Tribunal and learned Single Judge has directed return of the amount, would not lead to a conclusion of guilt; no charge framed for embezzlement or theft or breach of trust; thus, no order terminating the services of the respondent, could have been passed.

18. The learned Single Judge has observed in the impugned order that having seen the proceedings of the inquiry dated 16.10.1984 it is evident that the respondent had not submitted the list of defence witnesses or documents. While closing the examination of the bank's representative, the Inquiry Officer had simultaneously asked the defence representative to produce his list of witnesses and documents. Being caught unaware with such a direction, the respondent naturally was not in a position to submit either the list of witnesses or documents. The learned Single Judge has then observed that the Inquiry Officer should have given some more time to the Defence Assistant to submit his defence. Even the appellate authority failed to appreciate that reasonable opportunity to defend was denied to the respondent. The learned Single Judge has therefore held that the respondent was denied a reasonable opportunity to defend himself resulting in vitiating the inquiry. In our view the finding of the learned Single Judge and the Tribunal on this aspect is correct and suffers from

no illegality. Principles of natural justice have to be complied with as has been held in several judgments of the Apex Court and this Court and we quote a few hereinunder.

19. In the case of *Brij Bihari Singh vs Bihar State Financial Corporation and Ors.*, (2015) 17 SCC 541, the Apex Court held as under:

"It is well settled that a person who is required to answer a charge imposed should know not only the accusation but also the testimony by which the accusation is supported. The delinquent must be given fair chance to hear the evidence in support of the charge and to cross-examine the witnesses who prove the charge. The delinquent must also be given a chance to rebut the evidence led against him. A departure from this requirement violates the principles of natural justice. Furthermore, the materials brought on record pointing out the guilt are required to be proved. If the enquiry report is based on merely ipse dixit and also conjecture and surmises cannot be sustained in law."

20. In the case of *State of U.P. vs. Saroj Kumar Sinha*, (2010) 2 SCC 772, the Apex Court held as under:

"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the Respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

21. Once the respondent was not given enough time to produce his list of defence witnesses and the documents, in our view, there is a clear violation of principles of natural justice, procedures of domestic inquiries and a complete

denial of a reasonable opportunity to defend.

The inquiry was vitiated, in our view, on this ground alone.

22. The learned Single Judge has taken note of the fact that a perusal of the charge sheet would reveal that there are no allegations of misappropriation against the respondent. The charge in fact is of failing to make good shortage of Rs.1,48,000/-. This according to the learned Single Judge denoted that the appellant was ready to close the case provided the shortage was made good by the respondent. In our view this finding and observation of the learned Single Judge is also correct. A bare perusal of the judgment shows that there are no allegations of misappropriation, theft of embezzlement against the respondent and at best the charge was of not displaying proper vigilance in protecting the cash and negligence. It was also not the case of the appellant that the respondent had violated any safety norms or left his cabin at the relevant time. The learned Single Judge has also in support of this finding relied upon the testimony of three witnesses of the Bank viz. BW1, BW2 and BW3 and has come to a finding that in none of their testimony the Bank witnesses highlighted that there was any misappropriation by the respondent or that the respondent had any wrongful intent. We are in agreement with the learned Single Judge that the Bank witnesses have not deposed that the respondent was guilty of misappropriation or that he had any intent to cause a wrongful loss to the Bank.

23. The Apex Court in the case of Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Ors., (2007) 4 SCC 566 has relied on the definition of 'misconduct' in the Black's Law Dictionary and has held as under:

"7. Before advertent to the question involved in the matter, we may see what the term 'misconduct' means. In State of Punjab and Ors. v. Ram Singh Ex. Constable, [1992]3SCR634, it was stated:

Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior, its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

8. In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

The term 'misconduct' implies, a wrongful intention, and not a mere error of

judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct.

[See also *Bharat Petroleum Corpn. Ltd. v. T.K. Raju* (2006) IILLJ113SC .]

9. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In *Union of India and Ors. v. J. Ahmed*, (1979) IILLJ14SC , whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle* (Indicator Newspapers) 1959 1 WLR 698. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur*, (1960) ILLJ167Bom, and *Satubha K. Vaghela v. Moosa Raza*, (1969) 10GLR23 . The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

24. In the case of *Union of India (UOI) and Ors. Vs. J Ahmed*, (1979) 2 SCC 286, the Apex Court has held that lack of efficiency or attainment of high standards in discharge of public duty would not ipso facto constitute misconduct. Negligence in performance of duty or an error of judgment in evaluating a situation would not constitute misconduct unless the consequences are such that the damage is so heavy that the degree of culpability is very high. To the same effect is the judgment of the Apex Court in *Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Ors.*, (1984) 2 SCC 556 and *ITC Ltd. Monghyr, Bihar Vs. Presiding Officer, Labour Court, Patna (Bihar)*, (1978) II LLJ 354 SC.

25. The learned Single Judge having analyzed the law and the evidence on

record has given a categorical finding that the Bank could not prove that the respondent was negligent in performing his duties, which resulted in a loss of Rs.1,48,000/-. At best, according to the learned Single Judge, there was an error of judgment but there was certainly no wrongful intent. The loss suffered by the Bank has been directed to be made good by the Tribunal in the impugned award as the Bank has been given liberty to recover the money from the respondent. We, thus, do not find any infirmity in the judgment of the learned Single Judge.

26. In so far as the argument of the learned Senior counsel for the appellant that the outcome of criminal case and the acquittal therein will have no impact on the Disciplinary proceedings is concerned, we agree with this submission. There is no doubt on this proposition of law. However, this argument according to us has no relevance to the present case since the disciplinary proceedings have been resorted to by the Bank and the conclusion arrived at by the Tribunal as well as by the learned Single Judge in favour of the respondent herein, is independent of the outcome of the criminal proceedings and not influenced by it.

27. We find no merit in the appeal which is accordingly dismissed. Interim order dated 11.8.2015 stands vacated. The respondent is at liberty to seek withdrawal of the 50% amount towards his retiral benefits deposited in this Court and kept in an FDR, along with the interest which has accrued thereon. Liberty is granted to the appellant to recover Rs.1,48,000/- from the respondent, if not already recovered.