

(2025) 06 OHC CK 0932
In the Orissa High Court
Case No : Writ Petition (C) No.22135 Of 2017

State Bank Of India

APPELLANT

Vs

Rama Krishna Behera Vs

RESPONDENT

Date of Decision : 19-06-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 17B

Citation : (2025) 06 OHC CK 0932

Hon'ble Judges : Harish Tandon, CJ; K.R. Mohapatra, J

Bench : Division Bench

Advocate : Pradipta Kumar Mohanty, K.T. Mudali, Durga Prasanna Das

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Management of State Bank of India calls in question the legality and propriety of award dated 14th February, 2017 (Annexure-1) passed by learned Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (for brevity, 'learned Tribunal') in Industrial Dispute Case No.30 of 2004 directing the Petitioner-Management to reinstate the Workman/Opposite Party No.1 in service with 50% back wages.
 - 2.1. For convenience in discussion, the parties are described as per their respective status before learned Tribunal.
3. Shorn of unnecessary details, the facts relevant for adjudication of this case are that the industrial dispute set in motion pursuant to a reference made by the appropriate Government. For ease of discussion, the reference to be answered by learned Tribunal read as under:-

"1. Whether the action of the Management of State Bank of India, Umerkote in

terminating the service of Shri R.K.Behera, Messenger by way of infliction of punishment, is legal and justified? If yes, whether the same is proportionate to cause of offence committed by the workman?

2. If not, to what relief the workman concerned is entitled?"

3.1 The Workman (Opposite Party No.1) was appointed as Messenger in State Bank of India, Umerkote Branch with effect from 26th March, 1992 and was discharging his duties. One Smt. Radha Gouduni had a freedom fighter's account with the Petitioner-Bank at Umerkote Branch. The said branch used to draw the pension of said Smt. Radha Gouduni from the State Government and depositing the same in her SB account, which she used to draw from time to time. The account became dormant for non-drawal of any amount/non-operation of the account for a considerable period. When the matter stood thus, on 3rd October, 2000, an amount of Rs.20,000/- was withdrawn from the said account on presentation of a withdrawal slip bearing a Left Thumb Impression (LTI). At the relevant time, one Sri R.N.Biswas was working as Junior Manager, Sri Koteswar Pattnaik was working as Account Opening Counter Clerk and Sri Mrutunjaya Pattnaik was working as Paying Cashier in the said branch. On the next day of such withdrawal, it was detected that the account holder, namely, Smt. Radha Gouduni had died long back and Rs.20,000/- was drawn by her grandson. When the incident came to the knowledge of the higher authority, a departmental proceeding was initiated against him on the allegation that the said withdrawal slip of Smt. Radha Gouduni was passed for payment on the approach and request of the Workman and that the Workman presented the withdrawal slip of deceased Radha Gouduni before Sri Koteswar Pattnaik, who was manning the SB account counter on the date of withdrawal and requested to issue a token stating that the depositor was unable to come to the counter because of heavy rush in the Branch and managed drawal of money from the account of a deceased person. However, the Workman recovered the amount from the drawee and deposited the same in the account by the time the departmental proceeding was initiated. One Sri S. Rajarshee, SMGS-4 of Damanjodi branch was appointed as Enquiry Officer to conduct the departmental enquiry against the Workman and three other officials of Umerkote Branch named above. Enquiry report was submitted holding the Workman guilty of gross misconduct for facilitating the drawal of the amount from the account of a dead person. Hence, he was imposed with major punishment of removal from Bank's service in terms of Para-6 (b) of bipartite settlement dated 10th April, 2022. Needless to mention here that before imposing major penalty, the Workman was served with notice against the enquiry report as well as imposition of major penalty.

3.2 Being aggrieved, the Workman preferred an appeal before the appellate authority, which was dismissed and the order was communicated vide letter No.DGM/BER/DP&F/154 dated 4th July, 2003 (Annexure-5). Assailing the order of removal from service, the Workman moved the Assistant Labour Commissioner (Central), Bhubaneswar on different grounds. Conciliation being

failed on 10th December, 2003, the failure report was submitted to the appropriate Government and thereafter the matter was referred to learned Tribunal to answer the aforesaid reference.

3.3 The Workman in his claim statement stated that withdrawal of cash from a SB account was not his part of duty as per the duty chart of a Messenger. There might be some irregularity and negligence on the part of the Officer who passed the withdrawal slip for payment and issued token. Denying his involvement in any manner in the alleged withdrawal of the amount from the account of deceased Radha Gouduni, the Workman pleaded that the account in question became dormant with effect from September, 1999, as it was not being operated for long time. Before passing the withdrawal slip, Sri Koteswar Pattnaik, the SB Account Clerk was duty-bound to seek attendance of the account-holder, Smt. Radha Gouduni for verification of her LTI and forwarding slip for payment. Simultaneously, said Mrutunjaya Pattnaik, the Paying Cashier was expected to be vigilant and to ask for personal attendance of Radha Gouduni before making payment. Sri Biswas was also negligent of his duty in passing the withdrawal slip for payment without verifying the attendance and LTI of Radha Gouduni. The Workman had no role in such withdrawal and disbursement of the amount. When the matter was detected, he helped the Accounts Clerk and the Paying Cashier to recover the amount from the grandson of the deceased account holder and deposited the same in the account of deceased Radha Gouduni. Such an incident occurred due to negligence of the officials involved in passing the withdrawal slip, issuing token and releasing cash. Being a mere Messenger, the Workman should not be made liable and held responsible for the misconduct of senior officers of the Bank. A preliminary enquiry was conducted by the Assistant General Manager, SBI, Jeypore for the incident and one year thereafter, the departmental proceeding was drawn up against the Workman and three others. Charge sheet was issued without a copy of such preliminary report, statement of imputations, list of witnesses and documents relied on by the Department. The Enquiry Officer was appointed before submission of show cause reply by the Workman. Due to non-supply of the relevant documents, as stated above, the Workman could not submit his explanation. Though the departmental enquiry was conducted at Damanjodi Branch no advance Travelling Allowance (TA) was provided to attend the departmental enquiry. Though several documents were exhibited in the departmental enquiry and official witnesses were examined, copy of the same was not provided to the Workman. The statement of witnesses was not recorded on oath in presence of the Workman. He was also not provided with opportunity to cross-examine the official witnesses. The presenting Officer became the witness and relying upon his version conclusion to hold the Workman guilty was arrived at. The Workman was also not provided any opportunity to produce his witnesses. No material was placed before the Enquiry Officer to suggest that the Workman was aware of the death of Radha Gouduni and he had any connivance for withdrawal of such amount from the account of a deceased woman.

3.4 Further, other three officials were imposed with minor punishment, whereas

the Workman was inflicted with major punishment of removal from service only to protect the erring and negligent officials. The departmental enquiry was vitiated for not following the principles of natural justice. Hence, he claims his reinstatement with full back wages along with all service benefits.

4. The First Party Management (SBI, Umerkote branch) filed its written statement stating that an amount of Rs.20,000/- was withdrawn from the SB account of a deceased account holder. Taking advantage of his proximity, the Workman misled the bank officials to pass the withdrawal slip and thereby abated withdrawal of a huge amount from the account of deceased-Radha Gouduni. Departmental proceeding was initiated against the Workman as well as three other negligent employees. Charge sheet against each of them was submitted detailing the charges and imputations. Due enquiry was conducted in conformity with principles of natural justice. Ample opportunity was given to the Workman to defend himself in the departmental proceeding. He was furnished with the charge-sheet and all necessary documents for the purpose of defending himself in the departmental enquiry, as he was primarily responsible for such illegal withdrawal. The Enquiry Officer analyzing the documents available and the statement of witnesses held the Workman guilty of the charges levelled against him. He was issued with show cause notice along with copy of the enquiry report to submit his explanation. Following due procedure, he was dismissed from service. There being no defect in the departmental enquiry followed by imposition of major punishment of dismissal from service learned Tribunal should not interfere with the order of punishment.

5. On the basis of rival pleadings of the parties, learned Tribunal framed the following issues.

1. Whether the action of the Management of State Bank of India, Umerkote in terminating the service of Shri R.K.Behera, Messenger by way of infliction of punishment, is legal and justified? If yes, whether the same is proportionate to cause of offence committed by the workman?

2. If not, to what relief the workman concerned is entitled?

6. The question with regard to fairness of the enquiry was not raised by any of the parties to the industrial dispute. Thus, without framing any preliminary issue with regard to fairness of enquiry learned Tribunal proceeded to adjudicate the issues framed and answer the reference taking up of both issues as aforesaid simultaneously.

7. To substantiate his case, the Workman examined himself as WW-1 and relied upon certain documents, viz., copy of the job card No.4 of the Management, copy of the duty chat of Messenger as per the Staff Training Centre, copy of the suspension order dated 27th October, 2000, copy of the charge sheet dated 24th September, 2001, copy of letter dated 10th November, 2001, copy of letter dated 10th December, 2001, copy of the affidavit of Sri Jugal Gouda, copy of letter of Sri S.K.Bahinipati, copy of the enquiry report, copy of letter dated 26th

December, 2002, copy of letter dated 31st March, 2003, copy of the appeal memorandum and copy of order dated 4th July, 2003 of the appellate authority, which are marked as Ext.1 to Ext.13.

7.1 Likewise, the Petitioner-Management examined Sri Niranjana Swain, the Chief Manager and filed documents such as, copy of the charge sheet dated 24th September, 2001, Copy of office order No.404 dated 10th November, 2001, copy of office order dated 10th December, 2001, copy of order dated 21st March, 2003, copy of order dated 4th July, 2003, copy of charge sheet dated 24th September, 2001 in respect of the Workman, copy of the charge sheet dated 24th September, 2001 of Sri R.N.Biswas, Sri Koteswar Pattnaik and Sri Mrutunjaya Pattnaik, copy of warning letter dated 26th October, 2002 in respect of Sri Koteswar Pattnaik, copy of punishment order in respect of said Sri R.N. Biswas, copy of punishment order of administrative warning issued in respect of Mrutunjaya Pattnaik. The Management further relied upon the original withdrawal slip dated 3rd October, 2000, original deposit slip dated 9/10th October, 2000, original letter of Workman dated 9th October, 2000. The documents relied upon by the Management were marked as Ext. 'A' to Ext. 'P'.

8. Learned Tribunal on the basis of the material available on record and contentions raised, answered the reference by directing the Petitioner-Management to reinstate the Workman forthwith with 50% back wages vide award under Annexure-1. Assailing the same, this writ petition has been filed by the Management.

9. Before advertent to the rival contentions of the parties, it is apposite to mention that the Workman has in the meantime attained the age of superannuation. Thus, direction issued by learned Tribunal for reinstatement of the Workman cannot be given effect to even if the writ petition fails. Keeping in mind the same, this Court proceeds to discuss the rival contentions of the parties.

10. Mr. Mohanty, learned Senior Advocate appearing for the Management vehemently argued that while adjudicating the industrial dispute, learned Tribunal lost sight of the charges framed against the Workman, materials available against him as well as evidence available on record. Although ample materials available on record reveal that principles of natural justice was followed at every stage of the departmental enquiry, but learned Tribunal most mechanically held that the Workman was prejudiced for non-compliance of principles of natural justice. Enquiry conducted by the Enquiry Officer cannot be a full-proof one and there bound to be certain lacunae in it, but learned Tribunal ought to have examined irregularity, if any, in the departmental proceeding, has caused any prejudice to the Workman or not. If any of the lacunae is irregular one and did not prejudice the Workman in any manner, it should not be a ground to hold the entire proceeding to be vitiated.

11. Further, the pleading of the Management in its written statement was not at all discussed by learned Tribunal while adjudicating the industrial dispute.

Learned Tribunal unnecessarily emphasized the pleadings of the Workman without referring to the reply to it by the Management. It is the submission of Mr. Mohanty, learned Senior Advocate that the statements of witnesses examined on behalf of the Management were recorded in presence of the Workman and his representative and in token thereof, they signed the day-to-day proceedings. The witnesses of the Management were also elaborately and effectively cross-examined by the representative of the Workman during departmental proceeding. Moreover, when fairness of the departmental enquiry was not in question before learned Tribunal, the procedure adopted during departmental enquiry should not be a ground to answer the reference in favour of the Workman. It is his submission that keeping in mind the delinquency of the erring officials including the Workman, they have been suitably punished.

12. Maintenance of discipline in Banking Sector being of paramount consideration no illegality has been committed by dismissing the Workman from service. Admittedly, the Workman had a role in withdrawal of the amount from a dormant account of a deceased account-holder. Although at first instance, the Workman admitted to have assisted withdrawal of the amount in good faith to help the legal heir of the deceased account-holder, but subsequently disowned the same and totally denied his involvement in the entire incident. That itself shows the mala fide of the Workman. This aspect was completely brushed aside by learned Tribunal while adjudicating the industrial dispute. In any case, learned Tribunal should not have directed reinstatement of the Workman. If at all, it is found that there are some lapses in the departmental proceeding including the allegation of non-compliance of principles of natural justice, learned Tribunal ought to have directed the Management to conduct the enquiry de novo from that stage following the principles of natural justice. Taking the place of the disciplinary authority and directing reinstatement of the Workman was not only illegal but the same was also not sustainable in the eye of law. He, therefore, prays for setting aside the impugned award and to remit the matter to learned Tribunal for fresh adjudication of the industrial dispute.

13. Mr. Das, learned counsel for the Workman with reference to counter affidavit filed by the Workman submitted that the departmental enquiry was perfunctory as it proceeded without providing reasonable opportunity to the Workman to defend his case. He also reiterated the contentions raised by the Workman in his statement of claim.

13.1 It is further submitted that the Management adduced evidence of one Niranjana Swain, who was not present at the time of the incident. As such, he had no direct knowledge of the incident or the alleged involvement of the Workman in it. Although he adduced evidence on the basis of the official record neither the record of departmental proceeding was exhibited before learned Tribunal nor was any endeavour made to call for the same. The Workman being a Messenger had no role to play either for withdrawal or deposit of money in any account much less the account of the deceased account-holder, Smt. Radha Gouduni. The

Workman had exhibited his job card which clearly opts out his involvement in the entire incident. Ext. 'P', which was relied upon by the Management to bring home the charges levelled against the Workman was obtained from the Workman by exercising undue influence and pressure by the then Chief Manager of the Bank in order to save the other delinquent officials. In his cross-examination, the Workman had specifically stated about the same. It was alleged that the grandson of the deceased account-holder, namely, Jugal Gouda, by filing affidavit (Ext.7) clearly stated that he had illegally withdrawn the amount from the dormant account of his deceased grandmother. After the illegal withdrawal was pointed out by the bank employee, the Workman along with his co-employees rushed to his house and requested him to return the amount and he (Jugal Gouda) returned the same. Although he was present at the time of enquiry, but the Enquiry Officer did not allow said Jugal Gouda to adduce evidence in the enquiry. He also pointed out several other lacunae in the departmental enquiry and submitted that in view of the above, learned Tribunal has committed no error in directing reinstatement of Opposite Party No.1. He, therefore, prayed for dismissal of the writ petition.

14. Heard learned counsel for the parties; also perused the materials placed before the Court at the time of hearing. It appears from record that the Workman had specifically taken a plea that the departmental enquiry was not conducted in a fair and transparent manner in conformity with the principles of natural justice. Although evasive denial was made by the Management, but no specific pleading with regard to the fairness of the departmental enquiry was available in the written statement filed by the Management. No evidence was also adduced in that regard. The Presenting Officer appears to have no direct knowledge about the incident. The evidence of the Presenting Officer was purely based on official records. It, however, appears that no prayer was made by any of the parties to try the issue of fairness of the departmental enquiry, as primary issue. Be that as it may, when the Workman had specifically raised an issue with regard to the fairness of the departmental enquiry, learned Tribunal ought to have tried the fairness of the inquiry as a preliminary issue. But, learned Tribunal proceeded to adjudicate the industrial dispute on merit basing upon the materials available on record. Evidence on behalf of the Management was led to address that the departmental enquiry was conducted in accordance with the procedure laid down in the Certified Standing Order of the Management as well as complying with the principles of natural justice. But the testimony of MW-1 does not disclose in detail about the procedure adopted in conducting the departmental enquiry. It appears that the Management had heavily relied on the report of the preliminary enquiry, the copy of which was not supplied to the Workman. It further appears that the Workman had taken a specific plea that he being a Messenger, had no role in withdrawal of cash of a third party as per the duty chart of Messenger exhibited by the Workman. The Management appears to have not adduced any evidence as to how the withdrawal slip allegedly tendered by the Workman could be entertained and an amount of Rs.20,000/- was allowed

to be withdrawn in absence of the account-holder. Surprisingly, it appears from the written statement filed by the Management that the Officers involved in allowing withdrawal of Rs.20,000/- from the account of Radha Gouduni in her absence were inflicted with minor penalties. But in absence of any clinching material showing involvement of Workman in withdrawal of the cash, he was inflicted with the punishment of dismissal from service. It raises doubt about the fairness of the enquiry held against Workman.

15. On scrutiny of records, it appears that the Workman was asked to submit his explanation against the report of the Enquiry Officer in the departmental enquiry. But there is no material on record to show as to whether the Workman was given any opportunity to show cause against the proposed punishment to be imposed on him more particularly when he was inflicted with major penalty of dismissal from service. It, however, appears from the record that the Workman had helped to recover the amount, which was withdrawn from the account of a dead person. The same cannot be a ground to hold that the Workman had connived with the grandson of the deceased account-holder in withdrawing the amount.

16. On a cumulative assessment of the materials available on record, we are of the considered opinion that the materials on record were not sufficient to hold the Workman guilty of any misconduct alleged against him. Discussing the oral as well as the documentary evidence on record, learned Tribunal came to a conclusion that the departmental enquiry was not conducted with all fairness and in conformity with the principles of natural justice.

17. On a careful assessment of the submission of Mr. Mohanty, learned Senior Advocate appearing for the Management, it cannot be held that the impugned award is perverse, more particularly when learned Tribunal on assessment of materials on record arrived at the impugned findings. Only because a different view may be possible by re-appreciating the materials on record, this Court should not interfere with the impugned award in exercise of power conferred under Articles 226 and 227 of the Constitution. Accordingly, we find no reason to interfere with the impugned award under Annexure-1.

18. We have already held that the Workman has already attained the age of superannuation in the meantime and he has already received the amount under Section 17-B of the Industrial Disputes Act, 1947 till the date of his superannuation. Mr. Mohanty, learned Senior Advocate, in course of argument submitted and also placed on record a statement showing disbursement of an amount to the Workman beyond the date of his superannuation. Mr. Das, learned counsel appearing for the Workman does not seriously disputes the same. In that view of the matter, direction of learned Tribunal for reinstatement of the Workman does not arise at this stage. However, keeping in mind the that the Workman was drawing a salary of Rs.5,792/- at the time of his dismissal from service and that the Workman had attained the age of superannuation in the year 2022, this Court is of the considered opinion that an amount of Rs.5.00 lakh towards lump sum compensation in lieu of his reinstatement and 50% of the

back wages, as directed by learned Tribunal, will meet the ends of justice.

19. Accordingly, it is directed that the Management shall pay a sum of Rs.5.00 lakh (rupees five lakh only) to the Workman/Opposite Party No.1 as lump sum compensation in lieu of reinstatement in service along with 50% of back wages within a period of two months hence.

20. The writ petition is disposed of accordingly. In the facts and circumstances there shall be no order as to costs.

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