

(2003) 03 DEL CK 0082
In the Delhi High Court
Case No : Civil Writ No. 7294 of 2001

Subhash Chand Jain

APPELLANT

Vs

Regional Manager, PNB and Another

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Citation : (2003) 104 DLT 413(2) : (2003) 71 DRJ 505 : (2003) 97 FLR 1030 :
(2003) 3 LLJ 396 : (2003) 3 SLJ 457

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : K.D. Singh, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mahajan, J.

Rule.

1. With the consent of the parties, the matter has been heard and disposed of by this order.

2. Petitioner was appointed as a clerk in the erstwhile Hindustan Bank, which later merged with the Punjab National Bank. In 1983, an incident of forgery and cheating had taken place in the Bank for which Bank had lodged a complaint with the police. After investigating the matter, the police registered an FIR against various officials of the Bank including the petitioner. An FIR was registered u/s 420 read with Section 120B of the IPC The petitioner was suspended from service and departmental inquiry was also initiated against him. On the basis of the report given by the Inquiry Officer, the Disciplinary Authority passed an order of dismissal of the petitioner from service. This order was challenged by filing a departmental appeal, which was dismissed by the Appellate Authority. Petitioner then raised an industrial dispute and the matter was referred for adjudication to the Central Government Industrial Tribunal with the following terms of reference:

"Whether the action of the Management of M/s. Hindustan Commercial Bank (now merged with Punjab National Bank) in dismissing Shri Subhash Chand Jain from service, vide order dated 12.6.1985 is justified? If not, to what relief is the concerned workman entitled?"

3. The Industrial Tribunal after hearing the parties passed the impugned award thereby holding that the action of the Management in dismissing the petitioner from service was justified and the petitioner was not entitled to any relief. The award of the Tribunal has now been challenged by filing the present writ petition.

4. The contention of learned Counsel for the petitioner is that the petitioner was denied opportunity to defend himself in the domestic inquiry inasmuch as he was not permitted to engage a lawyer during inquiry for his defense. It is also submitted by learned Counsel for the petitioner that the respondents had violated Clause 19.4 of the bipartite settlement arrived at between the Bank and the Union and the inquiry was, Therefore, vitiated. It is also submitted that neither the documents required by the petitioner were allowed to him nor material witnesses were produced before the Inquiry Officer despite his request for cross-examination.

5. The main emphasis of the petitioner, however, is on the alleged violation of Clause 19.4 of the bipartite settlement. It is submitted by learned Counsel for the petitioner that the Industrial Tribunal has not given any finding on any of the issues raised by the petitioner and the award of the Tribunal was, Therefore, liable to be set aside. In terms of Clause 19.4 of the bipartite settlement, during the pendency of a trial for offences for which an FIR has been registered against delinquent, the department will not initiate any departmental proceedings. Clause 19.4 of the bipartite settlement reads as under:

"If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refused to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after inquiry, not to continue him in service, he shall be liable only for termination with three months" pay and allowances in lieu of notice as provided in clause 19.3 supra. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 above shall apply."

In terms of Clause 19.4 if after steps have been taken to prosecute an employee

or to get him prosecuted for an offence, he is not put on trial within a year of commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined in the settlements; provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there was no case for prosecution it shall be open for the management to proceed against the employee under the provisions set out in Clauses 19.11 and 19.12 relating to discharge. A reading of this provision makes it clear that it is only if the offence for which the delinquent is being prosecuted is similar to the charges leveled against him by way of charge sheet for misconduct that the department may not proceed with the inquiry for a period of one year from the date of commission of offence, however, if the charges for misconduct leveled against the delinquent official are different than the charges for which he is being prosecuted, there is no Bar to initiate departmental proceedings against the delinquent officials.

6. In the present case, the petitioner was being prosecuted for an offence committed u/s 420 read with Section 120B of the IPC for his having cheated the bank and committed fraud and thus caused loss of Rs.6.95 lakhs to the bank. In the charge sheet for misconduct issued to the petitioner, the charges leveled were that he had committed gross misconduct, namely, (i) committed acts prejudicial to the interest of the bank; and (ii) gross negligence in the discharge of his duties resulting in serious financial loss to the bank. A bare reading of the charge sheet for holding the departmental inquiry shows that while charges of misconduct against the petitioner were of negligence and dereliction of duties, the charges for which he was being prosecuted were cheating and fraud. Charges leveled by the charge sheet for departmental inquiry are, Therefore, entirely different from the charges for which he was being prosecuted. In this view of the matter, in my opinion, Clause 19.4 of the bipartite settlement was not attracted. The contention of the petitioner that the Tribunal has not dealt with this argument is not correct inasmuch as the Tribunal in its award has clearly held that the allegations of violation of Clause 19.4 of the bipartite settlement has no force as the charge sheet issued to the concerned workman was of gross negligence of duty and not for fraudulent withdrawal. I agree with this finding of the Tribunal.

7. Insofar as other grounds taken about the non-production of material witness and production of documents are concerned, the Tribunal has clearly held that not only the documents sought by the petitioner were not relevant but it was also the duty of the workman to produce witnesses if he wanted to examine them in support of his case and no request having been made by the petitioner to examine them, he could not put blame on the Inquiry Officer. Insofar as the request of the workman to engage a lawyer during the inquiry was concerned, the Industrial Tribunal has agreed with the contention of the Management that the charges against the workman were not so complicated as would require the assistance of a lawyer and more so when the Management itself was not being represented by a legally trained person. The Tribunal has, accordingly, held the

inquiry to be fair and proper. In the exercise of its jurisdiction under Article 226 of the Constitution of India, this Court is not required to sit as a Court of Appeal over the decision of the Industrial Tribunal. The Industrial Tribunal having considered every aspect of the matter and having come to a finding, which on the face of it does not appear to be either perverse or arbitrary, no case is made out for interfering with the same.

8. There is another reason as to why no case is made out for setting aside the award of the Tribunal. The petitioner was dismissed from service on 12th June, 1985. After reference was made to the Tribunal, the award was given on 22.8.1998. The award has been challenged by filing the present petition after a period of more than three years in November, 2001. The contention of learned Counsel for the petitioner is that since the trial was going on in the Criminal Court and he was acquitted only on 5.3.2001, he filed the present petition challenging the award in November, 2001. In my opinion, that cannot be the ground for not challenging the award for a period of three years. Acquittal in the criminal case has no bearing whatsoever with the departmental inquiry being initiated against the petitioner. The charges against the petitioner in the departmental inquiry and the charges for which the trial was going on were totally different. There was thus no need for the petitioner to wait for the decision of the Criminal Court. The acquittal in the criminal proceedings cannot be a ground either to set aside the order of dismissal of the petitioner or to hold that the charges leveled against the petitioner in the departmental inquiry were baseless. In a judgment reported as *Govind Das v. State of Bihar and Ors.*, (1997) 11 SCC 361, it was held that acquittal of the delinquent in the criminal proceedings cannot be made the basis for setting aside the order of termination of the services of the delinquent passed in the disciplinary proceedings on the basis of the evidence adduced in the departmental inquiry conducted in the charges leveled against the petitioner. In my view, Therefore, since this petition has been filed more than three years after the award of the Tribunal, the same is liable to be dismissed on the ground of delay and laches as well.

9. For all the foregoing reasons, I do not find any merits in this petition and the same is, accordingly, dismissed leaving the parties to bear their own costs.