IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1424 of 2023
In
Civil Writ Jurisdiction Case No.21575 of 2012

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Bank of India Zonal Office, Patna Zone, R-Block, First Floor, Chanakya Tower, Birchand Patel Marg, Patna, Bihar, 812005.

... ... Appellant/s

Versus

1. The Union of India New Delhi
2. The Central Government Industrial Tribunal No. 1, Dhanbad No. 1, Dhanbad through Union of India.
3. Sri Rajesh Kumar, Son of Shri Ramashish Pandey, Resident of VillageBabhani, P.O.- Lahthua, P.S.- Mohanpur, District- Gaya.

... ... Respondent/s

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Letters Patent of the Patna High Court---Clause 10---Constitution of India---Article 227----challenge to the decision of learned writ court upholding the decision of the Industrial Tribunal which set aside the punishment of compulsory retirement awarded to the 3rd respondent, an employee of the writ petitioner-bank, on allegation of misappropriation of funds---Findings: when the punishment awarded, pursuant to a disciplinary inquiry proceedings, is adjudicated by a Tribunal; on the raising of preliminary objection regarding the efficacy of an inquiry, the Tribunal has to first consider the same. If the inquiry is found to be defective for any reason, the Management could adduce evidence before the Tribunal to prove the charges---

There is nothing to show that the representative, who appeared for the Bank had requested the Tribunal for adducing evidence, by way of filing of a list of witnesses or a list of documents, before the Tribunal--- The Tribunal having noticed that there is no evidence recorded before it still went through the evidence in the domestic inquiry and found the allegations to be not proved; relying also on the statements of the complainants--- since the preliminary order of Tribunal, finding the inquiry to be defective, was not challenged, there is no reason to upset the order of the Tribunal--- Court has been rendered helpless only by reason of the negligence of the Bank in not challenging the preliminary order of the Tribunal--- order of the Tribunal insofar as setting aside the order of compulsory retirement and granting reinstatement with 50% back wages affirmed---appeal dismissed. ***(Para- 1, 2, 8, 11-13)***

(1972) 1 SCC 595 …….***Referred to.***

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Sinha, Sr. Advocate Mr. Ajit Kumar Sinha, Advocate Ms. Dilkash Khan, Advocate
For the UOI	:	Mr. Satyendra Kumar Jha, CGC
For the Respondent/s	:	Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2024

The writ petition was filed against the order of the Industrial Tribunal which set aside the punishment of compulsory retirement awarded to the 3rd respondent, an employee of the writ petitioner-bank.

2. The allegation was of misappropriation of funds, on which the Bank had initiated disciplinary proceedings. An inquiry was conducted, in which the allegations were proved based on the evidence led and the Bank had imposed a

punishment of compulsory retirement.

3. The specific allegation was that the petitioner, who was a cashier had received amounts from 2 customers for deposit into their accounts which was neither paid into their accounts nor was it reflected in the Bank's ledger. When the complaints were raised, the petitioner deposited the amounts.

4. The learned Single Judge found that only the employees of the Bank were examined at the inquiry and M1 to ME 18 were marked on behalf of the Management. While the employee, the 3rd respondent, marked 2 documents before the Inquiry Officer. The learned Single Judge found that the complainants, i.e. customers whose money was said to have been misappropriated, were not examined by the Management; which also weighed with the Tribunal in setting aside the punishment. The learned Single Judge found that, in addition to the complainants not being examined, it has come out in evidence that the amounts were credited to the accounts of the complainants. The complainants had also given sworn affidavit that they do not have complaint or grievance against the delinquent officer, which was not taken into consideration by the Disciplinary Authority. Finding the non-examination of the complainants to be crucial, the misappropriation was held to

have been not proved. The order of the Tribunal was upheld.

5. We heard Sri Ajay Kumar Sinha, learned Senior Counsel appearing for the appellant and Sri Rakesh Kumar Sinha, learned Counsel appearing for the 3rd respondent.

6. Having gone through the Inquiry Report, we were not convinced that the order of the Tribunal or the judgment of the learned Single Judge could be upheld; if we are to go by the findings in the inquiry. At the outset, we have to notice that the 'affidavit' of the complainants relied on by the learned Single Judge was directed to be produced, which has been produced along with a supplementary affidavit dated 13.07.24. The said documents produced as an Annexures A-4 and A-5 are not in the form of an affidavit and are mere letters. One of the complainants had said that he had not deposited the money and he had kept it in his own pocket by mistake, which was later revealed after the complaint was filed. The other complainant has stated in the letter that it was due to a misunderstanding that the complaint was filed. Both these documents cannot be relied on since the authors were not examined before the Inquiry Officer nor was it in the form of an affidavit, signed

before a person authorized to have documents sworn before him; after identification of the deponent.

7. We also notice that the complaints were produced in the inquiry, which clearly indicates the date on which the deposits were made; further proved by the counterfoils signed by the delinquent employee. The attendance register proved that delinquent employee was present in the Bank on the said dates. The ledgers maintained at the Bank did not disclose the deposit of the amounts as per the counterfoil and the deposit was made much later. This should have clinched the issue insofar as the misappropriation is concerned. However, we are considering the order of an Industrial Tribunal under Article 227.

8. The order of the Tribunal produced as Annexure-1 in the writ petition clearly indicates that by an order dated 25.05.12, the domestic inquiry was held to be not fair and proper. A notice was sent to the management fixing the case on 21.06.12 for adducing evidence, failing which arguments were proposed to be heard. There was no evidence adduced by the Management. The trite principle is

that when the punishment awarded, pursuant to a disciplinary inquiry proceedings, is adjudicated by a Tribunal; on the raising of preliminary objection regarding the efficacy of an inquiry, the Tribunal has to first consider the same. If the inquiry is found to be defective for any reason, the Management could adduce evidence before the Tribunal to prove the charges.

9. Apposite would be reference to ***(1972) 1 SCC 595; Delhi Cloth General Mills Co. v. Ludh Budh Singh*** from which paragraph 61 is extracted hereunder:-

> **61.** From the above decisions the following principles broadly emerge —
>
> "(*1*) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.
>
> (*2*) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more that the

management has given up the enquiry conducted by it.

(*3*) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(*4*) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the

Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(*5*) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(*6*) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(*7*) The above principles apply to the proceedings

> before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act."
> (underling by us for emphasis)

10. The Management is not required to challenge the preliminary finding of the Tribunal till a final award is passed. After the final award is passed, if it is against the Management, the Management could also challenge the award as also the preliminary order. We do not find the preliminary order of 25.05.12, challenged in the writ petition.

11. The learned Senior Counsel for the respondent-bank then submitted that though a representative of the Bank had approached the Tribunal, the Tribunal had not permitted him to lead evidence. On a specific query made by us, whether such a contention was taken, the learned Senior Counsel specifically pointed out paragraph 17, which stated that the Manager IR, who was authorized by the Deputy Zonal Manager, Bank of India was found to be not duly authorized since the authorization did not come from the Zonal Manager, who was representing the Bank before the Tribunal. There is nothing to show that the representative, who appeared for the Bank

had requested the Tribunal for adducing evidence, by way of filing of a list of witnesses or a list of documents, before the Tribunal.

12. The Tribunal having noticed that there is no evidence recorded before it still went through the evidence in the domestic inquiry and found the allegations to be not proved; relying also on the statements of the complainants. We do not agree with the Tribunal on the findings in the inquiry report but, however, the said report having been set aside as defective by the Tribunal by a preliminary order, when there was no evidence adduced, the Tribunal could have done nothing but set aside the order of punishment.

13. In the totality of the circumstances, though we do not agree with the reasoning of the learned Single Judge, we find no reason to upset the order of the Tribunal; since the preliminary order finding the inquiry to be defective, having not been challenged. If the preliminary order was challenged before us and we found infirmity in the same, then we could have relied on the evidence led at the domestic inquiry to find the delinquent, guilty or otherwise. The Court has been rendered helpless only by

reason of the negligence of the Bank in not challenging the preliminary order of the Tribunal. We, hence, affirm the order of the Tribunal insofar as setting aside the order of compulsory retirement and granting reinstatement with 50% back wages. The pension, if any, granted shall be set off while granting the 50% back wages as arrears.

14. The appeal stands dismissed.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

sharun/-

AFR/NAFR	AFR
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