State Bank Of India vs Tarun Kumar Banerjee And Ors on 19 September, 2000

Equivalent citations: AIR 2000 SUPREME COURT 3028, 2000 (8) SCC 12, 2000 AIR SCW 3397, 2000 LAB. I. C. 3136, 2000 (2) UJ (SC) 1344, (2001) 1 ALLMR 292 (SC), 2001 (3) LRI 890, 2001 (1) ALL MR 292, 2000 (9) SRJ 93, 2001 (1) UPLBEC 102, (2000) 10 JT 571 (SC), 2000 (10) JT 571, 2000 UJ(SC) 2 1344, 2000 (6) SCALE 410, 2000 LAB LR 1274, (2000) 4 ALL WC 3304, (2000) 3 CURLR 839, (2000) 2 LABLJ 1373, 2000 SCC (L&S) 1049, (2000) 2 CAL HN 60, (2000) 97 FJR 455, (2000) 87 FACLR 322, (2000) 4 LAB LN 598, (2001) 1 MAD LJ 70, (2001) 1 SCT 27, (2000) 4 SCJ 85, (2000) 5 SERVLR 261, (2001) 1 UPLBEC 102, (2000) 6 SUPREME 263, (2000) 6 SCALE 410, (2000) 4 ESC 2529, (2001) BANKJ 89

Bench: S. Rajendra Babu, D.P. Mohapatra

CASE NO.:
Appeal (civil) 3151 of 1997

PETITIONER:
STATE BANK OF INDIA

RESPONDENT:
TARUN KUMAR BANERJEE AND ORS.

DATE OF JUDGMENT: 19/09/2000

BENCH:
S. RAJENDRA BABU & D.P. MOHAPATRA

JUDGMENT:

JUDGMENT 2000 Supp(3) SCR 313 The Judgment of the Court was delivered by RAJENDRA BABU, J. A charge-sheet issued to respondent no. 1 reads that at about 11 a.m. on June 23, 1973 Smt. Parul Rani Chowdhury, a customer of the appellant-Bank, handed over to respondent no.l a sum of Rs. 3,002.40p along with two draft applications each for Rs. l,001.20p that even though respondent no.l received excess amount of Rs. 1,000 over Rs. 2,002.40p, he neither refunded the same nor asked the customer as to the matter in which the said amount was to be disposited either by depositing the same in the savings bank account or deposit the same in the Sunday deposits account; that instead he retained the said money with him with intention of misappropriating the same; that thereafter Smt. Parul Rani Chowdhury returned at about 1.30 p.m. on the same day and demanded the said amount of Rs. 1,000 handed over to respondent no.l in excess, which he flatly denied; that on a report being made to the Branch Manager by Smt. Parul Rani Chowdhury he inquired about the matter; that when a preliminary search failed to trace the amount and a physical

search of all the employees was being conducted, respondent no.l threw away the said amount of Rs. 1,000 on the floor that thereby he retained the amount with him with a criminal intent to misappropriate the same and thus lowered the image of the appellant-Bank and thus acted in a manner highly prejudicial to the interest of the appellant-Bank. Respondent No. 1 replied to the said charge-sheet by stating that on a memorandum being issued to him directly involving him in an alleged misappropriation of the said sum on June 23, 1973 he was compelled to sign a statement which he was not allowed to go through even. Thereafter, he was placed under suspension. He alleged that he is a victim of serious conspiracy specially while after his recent promotion from Messenger to Cashier he has looking forward for a bright future and he denied all the charges levelled against him and he claimed to be innocent.

A domestic enquiry was held against him and three witnesses were examined. Respondent No. I did not adduce any evidence nor he examined himself. On the basis of the evidence recorded in the domestic enquiry by a report made finding him guilty of charges against him, on January' 27, 1976 respondent no. I was asked to show cause as to why an appropriate punishment should not be imposed upon him and he was heard in the matter. The Regional Manager thereafter communicated to the respondent No. I the decision to dismiss him. On dismissal being made an industrial dispute was raised which was referred to the Central Industrial Tribunal (hereinafter referred to as 'the Tribunal'). The Presiding Officer held that the domestic enquiry conducted was just, fair and proper. However, on examination of the material on record the Presiding officer came to the conclusion that the finding of guilt against the first respondent was not just on the evidence on record and, therefore, he set aside the same. This award was challenged by a writ petition which was allowed by learned single Judge of the High Court and the award given by the Presiding Officer was quashed. On a further appeal the Division Bench of the High Court held that the learned single Judge could not have interfered with the award made by the Tribunal and set aside the same and restored the award made by the Tribunal. Hence this appeal by special leave.

The Tribunal having held that the domestic enquiry was fair and valid the scope of interference was very limited. This Court in Workmen of Messrs. Firestone Tvre & Rubber Company of India (P) Ltd. v. Management & Ors., [1973] 3 SCR 587, stated the law as follows.

> "(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of (he employer is justified.
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> (2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provision of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.
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> (3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the

management is guilty of victimisation, unfair labour practice or mala fides.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and the employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action;

and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal, and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, [1971] 1 SCR 742, within the judicial discretion of a Labour Court or Tribunal. The above was the law as laid down by this Court as on 15.12.1971 applicable to all industrial adjudication arising out of orders of dismissal or discharge."

Prior to the insertion of Section 11-A where a proper domestic enquiry had been held before the passing of the order of punishment, the Tribunal had no power to interfere with its findings on the

misconduct recorded in the domestic enquiry unless it was vitiated by one or other infirmities pointed out in Indian Iron & Steel Co Ltd. & Anr. v. Their Workmen, [1958] SCR 667, case. The conduct of the disciplinary proceedings and imposition of the punishment were all considered to be managerial functions with which the Tribunal had no power to interfere unless the findings were perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. Now, the position is different. In the course of adjudication proceedings if the Tribunal is satisfied that the order of discharge or dismissal was not justified, it can reappraise the evidence adduced in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer establishes the misconduct alleged against the workman. The criticism advanced against the award of the Tribunal is that evidence of three witnesses recorded at enquiry being sufficient to record the guilt of respondent No. 1, that evidence has been ignored and irrelevant considerations such as non-examination of complainant Smt. Parul Rani Chowdhury, non-production of money and non-availability of other evidence not on record is taken note of and, therefore, its award is vitiated. The Division Bench too fell in the same error, it is contended.

If we look at the evidence adduced in the present case, it is given by three witnesses who are the officers of the appellant-Bank - (i) Shri A.R. Dutt, the Branch Manager, (ii) Shri S.K. Mitra, Head Clerk and (iii) the present Bank Manager. The evidence of Shri A.R. Dutt is that on the date of occurrence a lady depositor produced two pay-in-slip consisting of draft application forms and a saving bank deposit form, each for Rs. 1,000 only plus Bank's commission for draft application form which were passed by the Accounts clerk for deposit in cash department. The amount was received by the first respondent' who Was acting as Head Cashier. The lady customer did not produce the savings bank pay-in-slip at the cash counter but delivered Rs. 3,000 as told by her to him with two draft application forms. At about 1 p.m. the lady with her husband came to him and complained that she had deposited Rs. 3,000 and odd with the cashier but did not receive the savings Bank pay-in-slip nor the excess amount refunded to her by the Cashier. On the receipt of the information he personally went to the cash department and checked the cash but did not find any excess amount therein. On asking the first respondent about the amount received by him he completely denied the same. He asked the Accountant to check the cash in the strong room and searched the Cashier concerned whether he has any cash of Rs. 1,000 with him. There was no excess cash found in the strong room. When at about 4.30 p.m. he asked the Accountant to search the Cashier, respondent No. 1, the Accountant then started checking him, he personally went out of room and saw the first respondent throwing the bundles of notes by the side of the wall in the accounts department, the possession of which was taken by him and he questioned respondent No. 1 about the same. Respondent No. 1 told him that he had put the money in his socks. On next Monday he took a statement in writing duly signed by the first respondent and reported the matter to the Head Office and thereafter respondent No. 1 was put under suspension under instructions from Head Office. In the cross- examination nothing worthwhile was elicited to tilt the evidence tendered in the examination-in-chief. This statement of Shri A.R. Dutt is corroborated by Shri S.K. Mitra who was Head Clerk at the relevant time. Again nothing worthwhile is elicited in his cross-examination except to state he belonged to S.B.S.S.A. The Tribunal, however, went on to say that even though the first respondent had not examined himself nor was any cross-examination directed at the witnesses to the question of his being a victim of conspiracy by the employees of the appellant-Bank who are members of another rival Union to which he belonged and placed heavy reliance on

non-examination of complainant, non-production of money, non-production of so-called confessional statements and non-production of any evidence which may have been available. But as far as the evidence tendered by the two witnesses is concerned who actually saw the incident having taken place in the manner referred to earlier, the charge of misconduct against the first respondent stood proved to the hilt and we fail to appreciate as to how the Tribunal could have taken any other view.

A customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper Banker customer relationship and, therefore, would not be in the interest of the Bank. Further, when money was secured a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. When in the course of the domestic enquiry no reliance was placed on the so-called confessional statement made by the first respondent, then non-production of the same is also of no significance. Thus, in our opinion, these circumstances are irrelevant and the Tribunal could not have placed reliance on the same to reach the conclusion it did and, therefore, the learned single Judge was justified in interfering with the same. In the writ appeal the learned Judges on the Division Bench reiterated the view expressed by the Tribunal which we have found to be fallacious.

At this stage, it is necessary to notice one argument that was urged on behalf of the first respondent, namely, that in the course of the order dismissing the first respondent from service it is noticed as follows :

> "In summing up after going through the issue raised by Shri Banerjee in detail, I am of opinion that a domestic enquiry like ours does not give any scope for producing all evidences whether having direct bearing in the case or not as is being done in a Court."

It is submitted that even if evidence is withheld, the conclusion of the inquiry officer would be correct is a perverse approach. We do not think so. What is stated therein is that when sufficient evidence was produced to conclude one way or the other, the evidence not produced will not be of any significance unless there was such evidence which was withheld would have tilted the evidence adduced in the course of domestic enquiry. No such evidence is forthcoming in this case. Therefore, this argument deserves to be rejected.

For the foregoing reasons, we have no hesitation in setting aside the order made by the Division Bench of the High Court and restore that of the learned single Judge.

For the aforesaid reasons, this appeal is allowed as stated above.