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S.B.I.

v.

HEMANT KUMAR

(Civil Appeal No. 2957 of 2011)

B

APRIL 6, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

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Service law: Disciplinary proceedings – Misappropriation of funds – Enquiry – Delinquent employee remaining absent during the enquiry – Number of adjournments – No intimation from employee about absence – Enquiry officer recording evidence on behalf of management and finding the employee guilty – Disciplinary officer passing order of dismissal – In appeal thereagainst, employee admitting guilt – Dismissal of appeal – Industrial dispute – Tribunal holding that the domestic enquiry held against the employee suffered from violation of principles of natural justice and enquiry officer ought to have made enquiry from the management about the alleged letter sent by employee for seeking adjournment and given another opportunity to him to lead evidence in rebuttal – Writ petition filed by management dismissed by High Court – On appeal, held: Both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective were completely untenable – Principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable – Admittedly, the employee had not appeared for the enquiry on two earlier dates – On the third date too he was absent and there was no intimation from him before the Enquiry Officer – Employee had already tendered two admissions of guilt and there was hardly anything that could be said on his behalf to repel the charges – Tribunal's findings were wholly unreasonable and perverse – High Court, unfortunately, did not consider the matter in the right perspective – The order passed by the High Court and the award made by the Tribunal set aside – Natural justice.

The respondent was working in the appellant-bank as cashier-cum-clerk. The appellant-bank discovered that the respondent had indulged in misappropriation of funds by making fictitious entries and manipulations in the bank's ledgers. He was given a charge-sheet. On the first day of enquiry, the respondent did not appear without any intimation to the Enquiry Officer. The enquiry was adjourned. On the adjourned date, the respondent sent the request for adjournment again on the ground of illness of his mother-in-law. The enquiry was once again adjourned and the respondent was intimated about the next date fixed in the enquiry through registered post as well as hand delivered letters. The respondent was once again absent and there was no intimation from him. PW.1 was the Branch Manager where the respondent was posted at the material time and where the misappropriation was committed by him. He had come in connection with the enquiry from Delhi to Dehradun for the third time, and the Enquiry Officer proceeded with the enquiry and examined him. After recording the evidence of PW-1, the Enquiry Officer closed the enquiry and submitted his report holding the respondent guilty of all the charges. A copy of the enquiry report was sent to the respondent along with a letter informing him that it was tentatively decided to dismiss him from service and asking him to show cause. The respondent gave his reply to the enquiry report and after hearing him in person, the disciplinary authority passed the order of his dismissal from service.

Against the order passed by the disciplinary authority, the respondent preferred an appeal and during the pendency of the appeal he submitted yet another letter admitting his guilt in writing. His appeal was dismissed and then the respondent raised an industrial dispute. The Industrial Tribunal held that the domestic

A enquiry held against the respondent suffered from violation of the principles of natural justice. While holding so, the Tribunal assigned two reasons. Firstly, the respondent had sent an application through post for adjournment of the enquiry on the ground that he had
B sustained injuries and even though this application did not reach the Enquiry Officer, it was his duty to find out from the bank whether or not such a letter was received and secondly, even after examining PW.1 *ex parte*, the
C Enquiry Officer ought to have given another opportunity to the respondent to lead evidence in rebuttal. The Tribunal, accordingly, set aside the order of dismissal and directed for the respondent's reinstatement with full back-wages. By impugned judgment, the High Court dismissed the writ petition filed by the appellant and
D affirmed the award passed by Tribunal. The instant appeal was filed challenging the impugned order.

Allowing the appeal, the Court

HELD: Both the reasons assigned by the Tribunal for
E condemning the departmental enquiry as defective were completely untenable. The principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. Admittedly, the respondent had not appeared for the enquiry on two
F earlier dates. On the third date too he was absent and there was no intimation from him before the Enquiry Officer, yet the Tribunal insisted that it was the duty of the Enquiry Officer to find out from the concerned department of the bank whether any intimation or
G application was received from the respondent. In a situation where the enquiry is not being held in the bank premises or even in the same town, where the concerned branch of the bank is located, it may take hours or even a day or two to find out whether any letter or intimation
H from the person facing the enquiry was received in the

bank and for all that time the Enquiry Committee would remain in suspended animation. The Tribunal's observation that it was only the third date of hearing and hence, it could not be said that the respondent had adopted dilatory tactics cannot be accepted. The second reason assigned by the Tribunal that the Enquiry Officer should have allowed the respondent the opportunity to lead evidence in rebuttal was also without substance in the overall facts of the case. The respondent had already tendered two admissions of guilt in writing and one orally before PW.1 and there was hardly anything that could be said on his behalf to repel the charges. The Tribunal's findings were wholly unreasonable and perverse and fit to be set aside. The High Court, unfortunately, did not consider the matter in the right perspective. The order passed by the High Court and the award made by the Tribunal are set aside. [Paras 9-12] [286-F-H; 287-E-H; 288-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2957 of 2011.

From the Judgment & Order dated 08.08.2008 & 17.02.2010 of the High Court of Uttarakhand at Nainital in Writ Petition No. 1746 of 2001 (MS) Review Application R.A. No. 14 of 2010.

Sanjay Kapur, Abhishek Kumar, Ashmi Mohan for the Appellant.

Randhir Singh Jain, Ruchika Jain for the Respondent.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Delay condoned.

2. Leave granted.

3. This appeal is directed against the judgment and order

A dated August 8, 2008 passed by the High Court of Uttarakhand. By the impugned judgment, the High Court dismissed the Writ Petition filed by the appellant before it and affirmed the award dated November 6, 1998 made by the Central Government Industrial Tribunal-cum-Labour Court, Pandu Nagar, Kanpur, directing reinstatement of the respondent in the service of the appellant-bank with full back-wages.

4. The respondent worked in the appellant-bank as Cashier-cum-Clerk. In January, 1994 it was discovered that the respondent had been indulging in misappropriation of money by making fictitious entries and manipulations in the bank's ledgers. On his malfeasance coming to light, the respondent not only admitted his guilt in writing *vide* memo dated March 3, 1994 but also deposited the amount of Rs.14,000/- to make good the amount earlier defalcated by him. He was given a chargesheet detailing his various acts of omission and commission to which he did not give any reply. Nevertheless, before the Enquiry Officer in course of the preliminary enquiry he expressed the intent to defend himself in the enquiry. The enquiry was first fixed on November 15, 1994 but on that date the respondent did not appear without giving any intimation to the Enquiry Officer. Due to his non-appearance the enquiry was adjourned to November 28, 1994. On that date, once again, he did not come to participate in the enquiry proceedings but sent a request for adjournment on the ground that his mother-in-law was seriously ill at Agra. The enquiry was once again adjourned and it was fixed for December 14, 1994. He was intimated about the next date fixed in the enquiry through registered post as well as hand delivery letters dated November 15, 1994 and November 28, 1994 respectively.

5. On December 14, 1994 the respondent was once again absent and there was no intimation from him. In those circumstances and having regard to the fact that the witness intended to be examined by the management in support of the charge had come in connection with that enquiry from Delhi to

Dehradun for the third time, the Enquiry Officer decided to proceed with the enquiry and examine him *ex parte*. PW.1 happened to be the Branch Manager where the respondent was posted at the material time and where the misappropriation was committed by him. In course of his evidence, in reply to the question what action was taken by him when the fraudulent entry came to light, the witness stated as follows:-

“PW.1: Shri Hemant Kumar (EPA) confessed having made a fraudulent entry of Rs.14000/- dated 26.09.93 in the A/C No.1287 of Miss Shivani and also confessed having balanced the ledger No.10 by manipulating the total on page 2 & 3 of Ex.P2. Hemant Kumar (EPA) gave a confession letter Ex.P4 probably on 10.02.94 and he was asked to deposit Rs.14000/-. Shri Hemant Kumar (EPA) deposited Rs.14000/- in the A/c of Miss Shivani on 11.02.94 *vide* credit voucher Ex.P3 which has been written in the hand of Hemant Kumar.”

6. After recording his evidence, the Enquiry Officer closed the enquiry and submitted his report holding the respondent guilty of all the charges. A copy of the enquiry report was sent to the respondent along with a letter telling him that it was tentatively decided to dismiss him from service and asking him to show cause and to appear for a personal hearing. The respondent gave his reply to the enquiry report and after hearing him in person, the disciplinary authority passed the order of his dismissal from service.

7. Against the order passed by the disciplinary authority, the respondent preferred an appeal and during the pendency of the appeal he submitted yet another letter admitting his guilt in writing, presumably hoping that a lenient view would be taken in the appeal. In the memo dated December 10, 1986 addressed to the Manager, State Bank of India, the respondent stated as follows:-

A "Dear Sir,

Subject: Entry dated 26.09.93 for Rs.14,000/-.

B With reference to above, I committed a fraud by
wrong crediting Rs.14,000/- on 26.09.93 which was
Sunday in SB account No.1287 of Shivani and lt. col. G.G.
Agrawal and I was closing the wrong balancing of ledger
No.10 — months. For which I am extremely sorry and
shameful. I beg you to — for this shameful act and I
promise you not to do such thing in future."

C 8. His appeal was, however, dismissed and then the
respondent raised an industrial dispute which was referred for
adjudication before the Central Government Industrial Tribunal-
cum-Labour Court. The Industrial Tribunal found and held that
D the domestic enquiry held against the respondent suffered from
violation of the principles of natural justice. The Tribunal further
noted that in the written statement filed by the appellant-bank,
the plea was not reserved to make good the charges by leading
evidence before the Tribunal in case the domestic enquiry was
E held to be defective. The Tribunal, accordingly, set aside the
order of dismissal and directed for the respondent's
reinstatement with full back-wages.

F 9. The Tribunal has assigned two reasons for holding that
the departmental enquiry held in the case was in violation of
the principles of natural justice. First, it held that the respondent
had sent an application through post for adjournment of the
enquiry on December 14, 1994 on the ground that he had
sustained injuries and even though this application had not
reached the Enquiry Officer it was his duty to find out from the
G bank whether or not such a letter was received and secondly,
even after examining PW.1 *ex parte* the Enquiry Officer should
have given another opportunity to the respondent to lead
evidence in rebuttal. In this connection, the Tribunal made the
following observations:-

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"In the instant case I find that after 14.12.94 the witness of the management were (*sic* was) examined but no opportunity was given for adducing evidence in defence. Apart from this I find that the concerned workman had applied through post and (*sic* for) adjournment on 14.12.94 on the ground that he had sustained injuries. Before this tribunal concerned workman has adduced evidence to prove that fact that he had applied for adjournment through post. O.P. Chaudhary PW1 enquiry officer has stated that he had not received any such application. However, he had admitted in cross-examination that the mail is received in the office of the bank premises. It appears that from the bank this letter was not handed over to the enquiry officer. In any case it is held that application was sent by post and in this way there is a presumption that such application would have been reached the addresses. Hence, the concerned workman had applied for adjournment. There was no inordinate delay in holding of enquiry as it was only third date of hearing hence it cannot be said that the concerned workman had adopted dilatory tactics."

10. We are of the view that both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective are completely untenable. The principles of natural justice cannot be stretched to a point where they would render the in-house proceedings unworkable. Admittedly, the respondent had not appeared for the enquiry on two earlier dates. On the third date too he was absent and there was no intimation from him before the Enquiry Officer, yet the Tribunal insists that it was the duty of the Enquiry Officer to find out from the concerned department of the bank whether any intimation or application was received from the respondent. Let us take a case where the enquiry is not being held in the bank premises or even in the same town, where the concerned branch of the bank is located. In such a situation, it may take hours or even a day or two to find out whether any letter or intimation from the person facing the enquiry was received in

A the bank and for all that time the Enquiry Committee would remain in suspended animation. The Tribunal's observation that it was only the third date of hearing and hence, it could not be said that the respondent had adopted dilatory tactics can only be described as unfortunate. We completely reject the notion
B that three barren dates in an in-house proceeding do not amount to delay. Let the in-house proceedings at least be conducted expeditiously and without in any undue loss of time.

C 11. The second reason assigned by the Tribunal that the Enquiry Officer should have allowed the respondent the opportunity to lead evidence in rebuttal is also without substance in the overall facts of the case. The respondent had already tendered two admissions of guilt in writing and one orally before PW.1 and there was hardly anything that could be said on his behalf to repel the charges.
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E 12. We are, therefore, satisfied that the Tribunal's findings are wholly unreasonable and perverse and fit to be set aside. The High Court, unfortunately, did not consider the matter as it should have, in light of the discussions made above. The High Court's order is equally unsustainable. We, accordingly, set aside the order passed by the High Court and the award made by the Tribunal. The appeal is allowed but with no order as to costs.

D.G.

Appeal allowed.