

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 2949 OF 2011

UNITED BANK OF INDIA

.....APPELLANT(S)

VERSUS

BACHAN PRASAD LALL

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. The appellant, being dissatisfied with the judgment of the Division Bench of the High Court dated 11th May, 2010, has preferred the present appeal.

2. The facts relevant for the purpose culled out from the record are that the respondent employee joined service as a Clerk-cum-Typist in the year 1973 and while in service committed serious irregularities in discharge of his duties, was placed under

suspension by an Order dated 7th August, 1995. He was later served with the charge-sheet along with the statement of allegation on 2nd March 1996. After the disciplinary inquiry was conducted in accordance with the disciplinary rules of the Bank, the inquiry officer found the charges proved. In consequence thereof, the respondent was dismissed from service by an Order dated 6th December, 2000 and the appellate authority also rejected the appeal preferred by the respondent employee by an Order dated 24th April, 2004.

3. The reference was made for adjudication by the appropriate Government in exercise of its powers under clause(d) of sub-Section(1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter being referred to as the “Act 1947”) vide Order dated 27th July, 2005. The same is as under:-

“Whether the action of the management of United Bank of India, Patna in awarding the punishment of dismissal to Shri Bachan Prasad Lal, clerk-cum-typist of Katihar Branch of UBI for alleged involvement of fraud is legal and justified? If not, to what relief Shri Bachan Prasad Lal is entitled?”

4. The learned Tribunal, after taking into consideration the record of the domestic inquiry, finally arrived to the conclusion that

inquiry was fair and proper and the charges stood proved but while exercising power under Section 11A of the Act 1947, the Tribunal under its Award dated 30th December, 2005 observed that the punishment awarded to the respondent employee of dismissal is not commensurate with the charge levelled against him and accordingly while upholding the allegations levelled against the respondent in reference to which the inquiry was conducted, substituted the punishment of dismissal with an order of reinstatement after lowering down of two stages in his basic salary that he was getting at the time of his dismissal. It was also held that there will be no payment of salary and allowances for the period of his suspension-save and except payment of subsistence allowance.

5. On a writ petition being preferred by the appellant in assailing the interference made by the Tribunal in exercise of its power under Section 11A of the Act 1947, the learned Single Judge by an Order dated 25th July, 2006, dismissed the petition holding that the Tribunal has a discretion under Section 11A of the Act 1947 and held that it has rightly been exercised which further came to be

challenged at the instance of the appellant in Letters Patent Appeal before the Division Bench of the High Court.

6. The Division Bench has upheld the finding returned by the Tribunal and confirmed by the learned Single Judge under the order impugned which has been categorically referred to in para 3 of the Order. However, the Division Bench was not inclined to interfere despite the fact that the respondent was found guilty after regular inquiry been held for misappropriation of funds and further observed that there should not be any compassion in the judicial proceedings which should be shown to the delinquent who commits such nature of fraud in discharge of his duties but still refused to interfere with the Order of the Tribunal for the reason that the respondent employee by that time had retired on attaining the age of superannuation in 2007. The relevant para is as under:-

“3. It appears to us that the Tribunal agreed with the finding of fact recorded by the learned Inquiry Officer that had found him guilty of misappropriation of funds. However, the learned Tribunal also observed that it was perhaps a case of bona fide error leading to alteration in the punishment. We feel that the learned Tribunal was not justified in disagreeing with the finding of fact recorded by the learned Inquiry Officer. It does not appear to us to be a case of bona fide error, but was really a case of well thought-out plan to divert funds from other accounts to a fictitious account opened by

him. In such a situation, reduction in punishment also becomes a case of uncalled for interference. The learned Tribunal also seems to have given weightage to the domestic situation in the employee's family, which we once again feel to be a wholly unjustified ground to dilute the guilt of the employee. Law is well settled that needless compassion should not be injected into judicial proceedings. We do not agree with the order of the learned Tribunal nor that of the learned Writ Court. However, we would have interfered with the order of the learned Tribunal but we refrain from doing so because the employee has already reached the age of superannuation way back in the year 2007.”

(emphasis supplied)

7. We have heard learned counsel for the parties and also perused the material available on record.

8. The respondent employee was served with the charge-sheet dated 2nd March, 1996 with the following allegations:-

“1. The charge sheet dated 2.3.96 against Sri B.P. Lal reads as follows:

- (a) Sri Bachan Prasad Lal was posted as Typist-cum-Clerk in Katihar Branch from 4.12.90 to 1.7.95. During this tenure he also worked as Temporary Special Assistant & Teller Clerk.
- (b) During this tenure, on different dates, he prepared nine fraudulent credit transfer vouchers aggregating Rs.53,465/- without giving full details/description of F/D A/cs numbers in five vouchers and in the rest mentioning A/c no. of different F/D account holders on the pretext of payment of interest towards fixed deposit account and got the full amount credited in S/B A/c No.8762 in the name of Smt. Asha Devi.
- (c) It is revealed that no F/D A/c in the name of Asha Devi could be traced on the basis of available branch records/documents. In case of Transfer Credit Vouchers bearing F/D A/c No. persons other than Smt. Asha Devi no such mandate for credit

of monthly interest was given by the respective account holders hence preparation of vouchers were unwarranted.

- (d) It is further revealed that he had irregularly opened the S.B. a/c No.8762 in the name of Smt. Asha Devi who is not ... illegible ...
- (e) He is a Special Assistant released/ called the credit vouchers posted by the Ledger keeper to the credit of S.B. a/c no. 8762 with but ensuring that many of such transfer credit vouchers were not signed by the other Officials as second signatory.
- (f) The amount so credited in the S.B/ a/c no. 8762 were subsequently withdrawn by withdrawal slips on various dates. The draws signatures as appearing on the above with drawal slips as well as on the back of there slips were forged by him and the said signatures on the withdrawal slips were verified by him and also passed for payment by him.
- (g) Moreover, he received payment of the withdrawal slips forging the signatures of the drawer on the back of the withdrawal slips of dated 9.1.93 for Rs. 5, 100/-, 25.8.94 for Rs. 10,000/-, 3.9.94 for Rs. 9,000/- 16.9.96. for Rs.10,000/- & 27.1.95 for Rs. 5,000/-
- (h) In order to accommodate amount of the above fraudulent credit entries he altered/adjusted & debit and credit entries in the transfer journal as well as amount of corresponding debit vouchers on 19.12.90, 20.12.90, 14.1.91 & 11.7.91 without any authentication. He also did not mention the journal number on the vouchers.

Thus, by his aforesaid acts he perpetrated fraudulent mis-appropriation of Rs. 53,465/- and thereby causing financial loss to the Bank.”

9. The nature of allegation against the respondent employee was of fraudulently preparing nine credit transfer vouchers on various dates on the pretext of payment of interest towards fixed deposits and crediting the whole amount to one saving account opened in

the name of one Smt. Asha Devi (admittedly the fake account prepared by respondent employee). In order to adjust the said amount, he manipulated the other book records of the Bank using forged signatures. After such nature of allegations stood proved, the disciplinary authority, after taking into consideration the record of inquiry and the post held by the respondent employee, punished him with the penalty of dismissal from service.

10. The finding of guilt recorded by the inquiry officer in his report was confirmed at all later stages by the disciplinary/appellate authority and even after judicial scrutiny by the Division Bench in the impugned judgment but still refrained from interference on the premise that the employee had superannuated in the year 2007.

11. In our considered view, looking into seriousness of the nature of allegations levelled against the respondent employee, the punishment of dismissal inflicted upon him in no manner could be said to be shockingly disproportionate which would have required to be interfered with by the Tribunal in exercise of its power under Section 11A of the Act 1947. At the same time, merely because the employee stood superannuated in the meanwhile, will not absolve

him from the misconduct which he had committed in discharge of his duties and looking into the nature of misconduct which he had committed, he was not entitled for any indulgence. The Bank employee always holds the position of trust where honesty and integrity are the *sine qua non* but it would never be advisable to deal with such matters leniently.

12. Consequently, the appeal succeeds and is allowed. The interference made by the Tribunal and the High Court in the impugned judgment is hereby set aside. No costs.

13. Pending application(s), if any, stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(ABHAY S. OKA)

NEW DELHI
FEBRUARY 11, 2022