

(1996) 05 AHC CK 0148

Allahabad High Court

Case No: C.M.W.P. No. 4346 of 1986

Central Bank of India

APPELLANT

Vs

S.P. Shukla and Another

RESPONDENT

Date of Decision: May 16, 1996**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33C(2)

Citation: (1996) 2 UPLBEC 1265**Hon'ble Judges:** D.K. Seth, J**Bench:** Single Bench**Advocate:** Navin Singh and Yashwant Verma, for the Appellant; S.C. and R.K. Jain, for the Respondent**Final Decision:** Allowed

Judgement

D.K. Seth, J.

The disciplinary proceeding was initiated against the Respondent No. 1 workman on the basis of a charge-sheet served on the workman on 3.2.1976. The workman was put under suspension by order dated 6.11.1975 which is Annexure 1 to the writ petition. Pursuant to an order dated 27th October, 1976 the workman was discharged from bank service by an order dated 12.11.1976 in terms of Paragraph 19.6 of the Bipartite Settlement between Indian Bank Association and All India Bank Employees Association dated 19.10.1966. The said order of discharge was reduced on an appeal pursuant to an order dated 24.10.1977 (Annexure 2 to the writ petition). By an order dated 13.11.1978, on the representation of the workman for payment of benefits during the period of suspension was disposed of by treating the period between 27.10.1976 to 16.11.1977 as on leave. Thereupon, the workman initiated a proceeding being LCA No. 409 of 1985 before the Central Government Industrial Tribunal-Cum-Labour Court, Kanpur, u/s 33C(2) of the Industrial Disputes Act. The said proceeding was disposed of by allowing the workman's claim by an order dated 5.12.1985. It is this order against which the present writ petition has

been moved.

2. Sri Yashwant Verma, learned Counsel for the Petitioner contends that In exercise of Section 33C(2), the Labour Court is empowered to compute the money payable under an existing right. According to him, in computing such benefits, the labour court u/s 33C(2) cannot embark upon determination of any right. Neither it can adjudicate any disputed question, though, according to him it can adjudicate disputed ancillary to computation but still then it cannot determine the rights. According to Mr. Verma, in the present case, the labour court has undertaken exercise to determine the rights since the benefits given does not flow from existing right. In support of his contention, he relies on the decision in the case of M/s. Hindi Sahitya Sammelan v. Presiding Officer, Labour Court 1996 (1) UPLBEC 42.

3. Mr. Raj Kumar Jain, learned Counsel for the Respondent No. 1 on the other hand, contends that in the facts and circumstances of the case, it is a simple computation and not a determination of any right. The benefit computed flows from existing right. According to him, the right of the workman is dependent on the order of termination since merged in the order of the appellate authority. The labour court has computed the benefit on the basis of the Bipartite Settlement referred to above wherefrom the rights flow. The matter of termination merged in the order of the appellate authority by means of reduction is governed by the provisions contained in the Bipartite Settlement. The labour court has, infact, computed the amount on the basis of the right flowing from him. According to him, it cannot be disputed that the right flowing from Bipartite Settlement is an existing right. Mr. Jain relied on the decision in the case of the Gopinath Kund v. Bank of India 1980 Lab IC 538 and on an unreported judgment dated 9.2.77 delivered by Hon"ble Mr. Justice K. N. Seth as His Lordship then was, in Second Appeal No. 291 of 1973 (State Bank of India, Gorakhpur v. R.N. Mishra and Anr.).

4. The order of discharge dated 12.11.1976 in original has been produced by Mr. R. K. Jain alongwith its xerox copy which is taken on record. Copy of final memo dated 27.10.76 is also produced by Mr. Jain which is also taken on record. Mr. Verma has not disputed the genuineness of the said document.

The contents of the said two orders are reproduced below:

"CENTRAL BANK OF INDIA

Station Road, Moradabad.

Dept. BM EO : 76/125

Dated 27.10.7

Final Memo

Mr. S. P. Shukla, Special Assistant (under suspension of Kidwai Nagar, Kanpur, appeared before me today, i.e., 27.10.76 in the morning in my office in Central Bank

of India, Station Road, Moradabad in compliance with the last Para of my findings dated 30.9.76 in his departmental enquiry held at Kidwai Nagar Branch, Kanpur. Mr. Shukla was required to be personally heard and/or his representation in writing must reach me by 22nd September, 1976 he could not do so in view of late delivery of my findings through Kidwai Nagar Office, Kanpur. As he sought extension or time limit fixed, it was allowed to him but Mr. Shukla further requested for the extension of time on three occasions thus the reasonable opportunity was provided to him.

Sri Shukla in his personal hearing prayed for reducing the punishment to the minimum and urged that the punishment should be such as may not deprive him of his service. Considering his violent attitude and action deliberately indulged by him, I am of the opinion that his continuance in service will not be in the interest of bank. However, since Mr. Shukla, being an aged man, has put in long service in the Bank and dismissal would put him much loss, so I have reconsidered his apologetic attitude and have taken a lenient view on humanitarian grounds in reducing the proposed punishment of dismissal without notice as defined in Para 19.6 (a) of the Bipartite Settlement to "have his misconduct condoned and be merely discharged". From the date of final order as defined in para 1.6 (a) of the Bipartite settlement.

I hereby confirm the above reduced punishment.

Sd.

(M.R. Sharma)

Enquiry Officer

Sri S. P. Shukla,

Special Asstt. (under Suspension)

C/o Central Bank of India, Kidwai Nagar, Kanpur (U.P.)

Central Bank of India

AZM : PRS : No. SRK/5/4632

Dated 12.11.1976.

MEMO

Sri Shukla is hereby discharged from Bank's Service under Para 19.6 (a) of the Bipartite Settlement as per final orders dated 27.10.76 passed by Sri M. R. Sharma, Enquiry Officer. A true copy of the final Memo dated 27.10.76 is enclosed.

Sri Shukla shall be treated, as discharged from Bank's service w.e.f. 27.10.1976.

Sd.

Asstt. Zonal Manager

Sri S. P. Shukla,
Special Asstt. (under Suspension),
Central Bank of India,
Kidwai Nagar, Kanpur.

5. A plain reading of the said order indicates that the termination was met in terms of Article 19 (a) of the Bipartite Settlement. The order of termination has not satisfied as to how the period of suspension would be treated as is ordinarily done in such cases. Therefore, the said order can be construed only with reference to the Bipartite Settlement. The punishing authority has left the issue to be governed by the Bipartite Settlement without exercising any discretion with regard to the determination of the benefit or disadvantage that would be available to the workman for the period from the date of suspension till the date of discharge. The order passed by the appellate authority which is Annexure 2 is reproduced below:

In terms of the order of the undersigned dated 28.Ji.77, the appeal of Shri S. P. Shukla against the order of discharge passed by the Enquiry Officer was disallowed and accordingly the order of discharge became effective. Shri Shukla requested for a personal hearing and though in terms of the provisions of the Bipartite Settlement, no hearing is required to be given, the same was allowed on 15.10.1977 at Bombay on sympathetic grounds.

After hearing Shri Shukla and his representative on 15.10.1977, the conclusion that can be arrived at is that the member has suffered great hardship during the period of his suspension, and is deeply repentant for all that he had done. In view of his repentance and further in view of his agreeing to his demotion and to work as a clerk, or alternatively to reduction in his present emoluments, I feel that the ends of Justice would be met if his present basic salary is reduced by three stages to Rs. 450 per month from this date and he be paid only such allowances as may be payable on the reduced basic pay. He may, however, be allowed to receive his usual grade increments each year from the date of this order, i.e., from October. It is, therefore, ordered accordingly as set out above.

6. The said orders also show that nothing was indicated as to how the said period, between the order of suspension till the appellate order was passed, would be governed. The order of reduction of pay by three stages to Rs. 450 per month was made effective from the date of the order, i.e., 24th October, 1977. Therefore, the period prior to 24th October, 1977 has not been dealt with. The said order, therefore, has accepted the same situation as emanated from the order dated 12th November, 1976. Therefore, the authority appears to have left the situation to be governed by the provisions contained in the Bipartite Settlement.

7. The settlement being the Desai Award in Para 19.12 (b) deals with the question of suspension in the following manner:

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowance, etc.

8. It appears from the said provision that in case no action is taken at the conclusion of the enquiry, then the workman is entitled to full wages and allowances including all other privileges for the period of suspension. If some punishment other than dismissal is inflicted, the whole or part of the period of suspension may at the discretion of the management be treated as on duty with the right to a corresponding portion of the wages, allowances, etc. Therefore, it is the discretion of the management to treat the period or part of it as on duty. The management has a right to deal with the same in appropriate manner.

9. The enquiry begins with the issue of charge-sheet. Therefore, the word "pending enquiry" means the period between the starting and conclusion of the enquiry. In the present case, admittedly, the charge-sheet was issued on 3rd February, 1976. Therefore, the enquiry started with the issue of the charge-sheet on 3rd February, 1976 as contemplated in Para 19.12 (a) which provides that an employee against whom disciplinary action is proposed, he shall be given a charge-sheet and a date shall be fixed for enquiry with sufficient time being given. The very expression "disciplinary action is proposed or likely to be taken" means contemplation of enquiry which commences by giving of a charge-sheet. Therefore, the period between 5th November, 1975 till 3rd February, 1976 cannot be treated to be a period pending enquiry. If the said period is not a period pending enquiry, then the employee cannot be treated to have been under suspension in view of Clause (b) which provides suspension pending enquiry. The provision of suspension occurs in two places--first in 19.3 (a) of Chapter XIX of the Shastri Award and second in 19.2 (b).

10. There is a marked difference in the two provisions. Whereas under Para 19.3 (a), an employee may be suspended as soon Bank takes steps to prosecute him or get him prosecuted. It is not dependent on the actual prosecution but on the taking of steps to prosecute or getting prosecuted. On the other hand, 19.12. (b) contemplates suspension pending enquiry and not in contemplation thereof. Until the charge-sheet is issued, admittedly the enquiry is within the realm of contemplation. Unless initiated, nothing remains pending. Until the issue of charge-sheet, enquiry is not Initiated. There is no existence of enquiry till the charge-sheet is issued. Therefore, there cannot be any question of pendency of such enquiry.

11. My above view is supported by the decision in the case of Gopi Nath Kund (supra) and the case of State Bank of India v. R.N. Misra (supra) cited by Mr. Jain.

12. Originally, an order of dismissal was passed upon a representation made the said order of dismissal was withdrawn and he was discharged on sympathetic ground by order dated 12th November, 1976 against which he preferred an appeal. The appeal was disallowed by order dated 28th May, 1977. He made a further representation whereupon the said order dated 28th May, 1977 was modified by order dated 24th November, 1977 to the extent of reduction of pay by three stages instead of discharge. Thus the order dated 12th November, 1976 and the order dated 28th May, 1977 which are again merged in the order dated 24th November, 1977 (which is the final order on the inquiry proceedings. Therefore, it is the final order when the enquiry proceeding is concluded. Therefore, so far the period between 3rd February, 1976 till 24th October, 1977 is concerned, it is to be treated as under suspension. This proposition cannot be doubted or disputed.

13. Admittedly, the appeal is a continuation of the original proceedings. The disciplinary proceeding remains pending from the commencement of it with the service of the charge-sheet till the appellate authority had passed the order, namely, between 3rd February, 1976 till 24th October, 1977.

14. Therefore, the finding by the Labour Court that the suspension would be effective only from 3rd February, 1976 and not from 6th November, 1975 can be said to be a matter of determination ancillary to computation. It does not travel in the domain of the determination that the workman was not on suspension from 5th November 1975 but from 3rd February, 1976.

15. As I have already held that the enquiry remained pending till 24th October, 1977. Therefore, the suspension pending enquiry had continued till 24th October, 1977. Therefore, during the period of suspension, the workman is entitled to suspension allowance for the said period. Since the order dated 12th November, 1976 had merged in the order dated 24th October, 1977. The period intervening in between 12th November, 1976 and 24th October, 1977 cannot be treated to be a period other than a period spent under suspension pending enquiry. Therefore, as the facts remain, the existing right of the workman was entitlement to the suspension allowance as admissible under law from the period 3rd February, 1976 till 24th October, 1977. Any decision to the contrary would be in the realm of determination and not a computation of benefit flowing from an existing right.

16. It is contended by the Bank in the written statement in Para 5 that the workman was reinstated with effect from 24th October, 1977 but he rejoined service on 17th November, 1977. Now the question as to whether the workman would have joined on 25th October, 1977 or he was in any way guilty of not joining prior to 17th November, 1977 or the Bank was responsible for the delay is a question of determination for the purpose of computation since the question is a disputed

question of fact not admitted by the Bank. This cannot form subject-matter of computation even incidentally.

17. Then again by order dated 30th November, 1973 which is Annexure "3" to the petition, the management, in exercise of its discretion as contemplated in Para 19.12 (b) had decided a part of the period of suspension, namely, from the date of discharge till he resumed duty including the period between 24th October, 1977 and 17th November, 1977 to be treated as on leave. Whether the said discretion was rightly exercised or not, whether the same is valid or legal or whether the management in exercise of such discretion has rightly passed the said order or not is a disputed question. When the said order stares on the face of the existing right, the same travels to the domain of determination of the right. By order dated 16th August, 1983, pursuant to the representation dated 4th April, 1983, the workman's prayer for payment of suspension allowance for the period between 6th November, 1975 till 23rd October, 1977 was disallowed by the management. It appears that in the said representation, the workman had claimed payment for the period between 6th November, 1975 and 23rd October, 1977. He did not claim anything in respect of the period between 24th October, 1977 till 16th November, 1977. Therefore, it appears that the workman had accepted the determination of the management with regard to the period 24th October, 1977 till 16th November, 1977. Whether the said acceptance would operate as estoppel or not again takes the dispute in the realm of determination as to whether the order dated 30th November, 1978 was correct or not.

18. Thus, it appears that the workman would be entitled to suspension allowance and leave pay, as the case may be, as admissible to him on the pay which he was drawing from 3.2.1976 till 24.10.1977 for the period of suspension which is governed by the order dated 30th November, 1978 as indicated above together with pay (full) without reduction as ordered by order dated 24th October, 1977 for the period 6th November, 1975 till 3rd February, 1976. Any computation contrary thereto would amount to determination of disputed rights and the benefit flowing from would not be from a source of existing right.

19. In that view of the matter, the order of the Labour Court being Annexure 7 to the writ petition impugned herein cannot be sustained and is hereby quashed. In fitness of things, the matter is remanded to the Labour Court for computation of the benefit payable to the workman in the light of the observation made hereinbefore within a period of 6 months from the date a certified copy of this order is produced before the Labour Court and giving opportunity to both the parties.

20. Mr. Verma has correctly shown that the Labour Court had exceeded the Jurisdiction vested in the Labour Court u/s 33C(2) of the Industrial Disputes Act within the meaning of the ratio decided in the case of M/s. Hindi Sahitya Sammelan (supra) cited by him.

21. In the result, the writ petition stands allowed in part as indicated above. There will, however, no order as to costs.