



**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CWPs No. 3597 of 2020 a/w
4844 of 2020 and CMPMO
No. 420 of 2020**

Reserved on: 9.11.2020

Decided on: 27.11.2020

1. CWP No. 3597 of 2020

State Bank of India and another

...Petitioners

Versus

Presiding Officer and another

...Respondents

2. CWP No. 4844 of 2020

Ajay Sood

...Petitioner

Versus

State Bank of India and others

..Respondents

3. CMPMO No. 420 of 2020

State Bank of India and another

...Petitioners

Versus

Ajay Kumar Sood

..Respondent**Coram****Hon'ble Mr. Justice Sureshwar Thakur, Judge.****Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge**

Whether approved for reporting? Yes

For the petitioner : **Mr. Arvind Sharma, Advocate for the petitioners in CWP No. 3597 of 2020 and in CMPMO No. 420 of 2020.**

Mr. Rajneesh Maniktala, Senior Advocate with Mr. Naresh Kumar Verma, Advocate, for the petitioner in CWP No. 4844 of 2020.

For the respondents : **Mr. Arvind Sharma, Advocate, for respondents No. 1 and 2, in CWP No. 4844 of 2020.**

Mr. Rajneesh Maniktala, Senior Advocate with Mr. Naresh Kumar Verma, Advocate, for the respondent No. 2, in CWP No. 3597 of 2020 and for respondent in CMPMO No. 420 of 2020.

Per Sureshwar Thakur, Judge

Through an award, made on 9.7.2019, the learned Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh, imposed in substitution, of, the penalty, of, dismissal, of, service, hence imposed upon the workman, by the disciplinary authority, rather the penalty, of, his compulsory retirement from service,

alongwith all consequential benefits. Both the workman, and, the employer, become aggrieved from the afore award, inasmuch as, the workman becomes aggrieved from a finding adversarial, to him, becoming returned, upon charge No. 1, and, the employer becomes aggrieved from finding adversarial, to it, becoming returned, upon charges No. 3, 4, 5, 6, 7, 8 and 9, (i) and also becomes aggrieved from the afore order, hence substituting the imposition, of, penalty, of, dismissal, from service upon the workman, by the disciplinary authority, to imposition upon him, of penalty, of, his compulsory retirement from service, alongwith all consequential benefits. Consequently, through theirs respectively rearing CWP bearing No. 4844 of 2020, and, CWP bearing No. 3597 of 2020, they cast a challenge, upon, the afore award. Consequently, both the writ petitions, are, amenable for becoming adjudicated upon, through a common verdict. Furthermore, since, after the afore award, becoming rendered by the learned Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh, hereinafter referred to as, “the Tribunal”, the latter proceeded to transmit the award, for its execution, to the Civil Court concerned, located at

Palampur, and, the Court of the Senior Civil Judge, Palampur, through an order made on 7.10.2020, proceeded to issue a show cause notice to the JDs/respondents/employer concerned, as to why, they be not sent to civil prison, or their property be not attached, (ii) thereupon, since the afore order becomes impugned hence through the bank, constituting CMPMO, bearing No. 420 of 2020, before this Court, thereupon, and, since therethrough(s), the, implementation, of, the award, as becomes, impugned before this Court, becomes strived, hence, the legality, of, the order made on 7.102020, by the Court, of, the learned Senior Sub Judge, Palampur, H.P.. also becomes amenable to be decided, through a common order.

2. The hereinafter charges became drawn against the workman:

“Charge No. 1- You created nuisance in the Branch premises during the business hourse and disrupted smooth and normal functioning of the Branch on 28.5.2012 when a letter bearing No. Br/AWS/1 regarding your unauthorized absence was served on you. You misbehaved with the Branch Manager, tore the latter No. Br/AWS/1, dated 28.5.2012, into pieces, while shouting “No Branch Manager has

dared to issue me letter prior to this”.

2. Charge No. 2- You did Gali Galoch and threatened the Branch Manager on 28.5.2012 while using abusive language.

3. Charge No. 3 You demonstrated before Palampur ADA Branch on 28.5.2012 without giving prior notice to the Bank with regard to demonstration. Subsequently, you organized lunchtime demonstration from 8.6.2012 to 18.6.2012 again without giving any prior notice.

4. Charge No. 4.- On 29.5.2012, you disrupted the smooth working of the Branch by insisting that the box containing remittance be taken out by the Branch Manager. When an office namely Shri Surjeet Singh volunteered to lift the box, you came alongwith Shri Madan Bhandari Senior Special Assistant and Shri Ram Mal Guard up to the entrance of the Branch and while Shri Surjeet Singh was carrying the remittance box. While Shri Surjeet Singh was trying to engage the services of canteen boy to carry the box up to the vehicle, this was prevented by you and above employees.

5. Charge No. 5- You deliberately flouted system and procedures on several occasion in thepast with an intention to undermine the authority of the Branch Manager in the Branch and in theprocess seriously increasing operational risk of the branch. One instance is given as under:

When the Branch Manager asked uout for special eave application already availed of from 5.4.2012 to

11.4.2012, you instead of giving leave application, superimposed with remarks "Special Central Committee Meeting' in the attendance register in gross violation of service rules.

Charge No. 6- You un-authorisedly absented yourself from duty on 23.5.2012 and 26.5.2012 without any intimation or application.

Charge No. 7- You disobeyed office order dated 17.7.2012 and 18.7.2012 and did not work as case Manager from 17.7.2012 to 19.7.2012.

Charge No. 8- You proceeded on medical leave from 26.7.2012 again without producing relevant medical certificate.

Charge No. 9- You issued a cheque bearing No. 043887 dated 20.8.2012 amounting to Rs. 375000 in favour of Shri Sarvesh Arora from account No. 11358897046 without having sufficient balance in the account which was returned on 1.9.2012.

2. The Inquiry Officer, after receiving the department's evidence, upon the afore drawn charges, against the workman, proceeded to make his Inquiry report, embodied in Ext. P-18, wherein he concluded, qua the afore drawn charges, becoming proved against the workman, (i) whereafter the disciplinary authority, also concurred with the conclusion(s) formed by the Inquiry Officer, and, also proceeded to issue a pre-decisional notice, of, personal hearing, upon the workman, and

scheduled the afore personal hearing, for 5.11.2013. However, on 6.11.2013, the disciplinary authority, imposed upon the workman, the penalty, of, dismissal, from service. The learned Tribunal, upset, the legality, of, conclusion(s), hence formed by the Inquiry Officer, in his report, borne in Ext. P-18, on the anchor of, (a) the Inquiry Officer displaying lack, of, impartiality, in conducting the inquiry proceedings, as, became evinced from his failing, to supply, all the apposite documents, to the delinquent workman, for enabling him to prepare an efficacious defence, vis-à-vis, the afore drawn charges, against him, (b) the workman, after conclusion, of, recording, of, the departments' witnesses, despite providing to the Inquiry Officer, the list of defense witnesses, and, the Inquiry Officer, listing the lis, on 3.9.2013, for examination, of, the workmans' witnesses, and, despite the workman making requests, for postponing the recording, of, testimony(ies), of, the witness(es), occurring in the list, supplied to him, on ground, qua his being beset with critical ailments, (c) nonetheless, the Inquiry Officer, proceeding ahead, and, making an exparte inquiry, on 11.10.2013, (d) the

disciplinary authority, untenably listing the lis, for personal hearing, of, the workman, on 5.11.2013, yet the Officer(s) discharging the duties, of, disciplinary authority, though being on leave, on the afore date, hence not making any decision thereon, rather it, without any notice to the workman, about the lis, being listed, on 6.11.2013, proceeding to, in a hot haste manner, and, with a thorough non-application, of, mind, imposing upon the workman, the, penalty, of, dismissal, from service.

3. All the afore infirmities noticed in the impugned award, to, occur, in, Annexure P-18, remain neither contested nor any endeavor, is made by the learned counsel, appearing for the employer to scuttle all the legal effects thereof. Consequently, the afore apposite noticed infirmities, as, echoed in the impugned award, to occur in Annexure P-18, and, appertaining, to, affirmative conclusion(s), being made qua the workman, vis-à-vis, the apposite thereto charges drawn against him, do, necessarily acquire overwhelming legal weight, and, also enjoin theirs being revered.

4. Be that as it may, since the impugned award, is made, in pursuance to a petition filed, before the learned

Tribunal, by the Workman, under Section 2-A, of the Industrial Disputes Act 1947, and, when after affording, the, fullest adequate opportunities, to the contesting litigants, to adduce their respective evidence(s), on the issues, falling for consideration, the learned Tribunal proceeded to make the impugned award, (i) thereupon the effect, if any, or the legal effect, of, Annexure P-18, inasmuch as, it containing evidence, in support of the conclusion(s), borne therein, does, emphatically, become(s) subsumed, within the canvas, and, contours, of, the evidence adduced, respectively, by the workman, and, by the employer, before the learned Tribunal, (ii) unless evidence emerged through the witnesses', who testified before the learned Tribunal, and, upon their being confronted with their statement(s), previously made before the Inquiry Officer, and, its making unearthing(s), vis-à-vis, hence no credibility, being assigned, vis-à-vis, theirs respective testification(s), made before the learned Tribunal. However, a perusal, of, evidence, adduced before the learned Tribunal, both by the Workman, and, the employer, unveils, (iii) that the afore evidence, became testified, by all the witnesses concerned, rather with the

fullest opportunity, being afforded to the counsel, for the workman, and, to the counsel for the employer, (iv) and, also unveils that the counsel, for, the employer, rather omitting to, during the process, of, his conducting their cross-examination, hence confront them, with their previous statement, recorded before the Inquiry Officer, for therethrough(s), his obviously attempting to, hence impeach their respective credibility(ies). In summa, hence the evidence adduced before the Tribunal concerned, alone enjoins its, if deemed fit, being appraised by this Court.

5. The learned Tribunal, had, upon consideration, of evidence adduced, vis-à-vis, charges No. 2, 3, 4, 5, 6, 7, 8 and 9, hence concluded, qua theirs, not therethrough, becoming proven, rather it made a conclusion, vis-à-vis, their being lack, of, cogent evidence, or their being want, of, adduction, of, cogent evidence, qua therewith, by the employer, and, obviously, returned thereon(s) finding(s), adversarial, to the employer. Consequently, hence the appraisal, of, evidence, adduced by the department/employer, vis-à-vis, the afore charges, does not, merit any interference, as reading(s) thereof,

obviously, unfold qua the appraisal, of, evidence, adduced, vis-à-vis, the afore drawn charges, hence by the learned Tribunal, hence not, suffering from any gross mis-appraisal thereof, nor from any stain, of, non-appraisal, of, germane evidence, hence adduced qua therewith, by the department/employer.

6. The ire res-controversia, erupting interse the litigants, appertains, to findings, adversarial, to the workman, becoming returned upon charge No. 1. Though the learned counsel appearing for the workman, contends with much vigor, before this Court, that since the CCTV footage, does not vividly pronounce, qua the workman, tearing the apposite letter, thereupon findings, adversarial, to the workman, were not amenable, to be returned upon charge No. 1(supra). However, the afore made submission, before this Court, by the learned counsel for the workman, is, made without his bearing in mind, the further facet, vis-à-vis, the workman, in his cross-examination, making articulation(s), coined in the phraseology, “No Branch Manager has dared to issue me letter prior to this”. In addition, with the Workman, despite his coming into possession, of, the apposite letter,

issued to him, by the Branch Manger, especially when no evidence, contra therewith, became adduced, by him, hence became enjoined, to dispel the factum, of, his not tearing it, rather ensure its production, before the Officer concerned. However, he failed to adduce/produce the afore letter before the Officer concerned, thereupon, dehors the CCTV footage, not graphically displaying his tearing the apposite letter, rather not cementing or filliping any conclusion, vis-à-vis, perse therefrom, any exculpatory finding, becoming amenable to be returned upon charge No. 1.

7. Lastly, the learned counsel appearing, for the department/employer, has contended with much vigor, before this Court, that if charge No. 1, has become cogently proven, thereupon, the learned Tribunal, was not cast with a duty, to proceed to, yet substitute the penalty, of, dismissal, from service, imposed upon the workman, by the disciplinary authority, to, a penalty, of, his compulsory retirement from service, alongwith all consequential benefits. He submits that given the gravity, of, the afore charges, hence punishment(s), proportionate therewith, was, rather penalty, of, dismissal, from service,

than the imposition, upon the workman, of, the penalty, of, compulsory retirement, from service, alongwith all consequential benefits. However, the afore made submission, before this Court, by the learned counsel for the employer, is, unmeritworthy, as, during the entire career, the workman, evidently maintained utmost honesty, in discharging his duties, inasmuch as, he evidently earned in his ACRs, rather commendable remarks, qua therewith. Since, furthermore, as charge No. 1, does not appertain, to mis-appropriation, of, the Banks' property, by the workman, thereupon, the cumulative effect, of, the afore, is, qua the verdict, rendered by the Hon'ble Apex Court, in case titled as, "State Bank of Bikaner and Jaipur Vs. Nami Chand Nalwaya", whereto which civil appeal, became assigned Civil Appeal No. 5861 of 2007, becoming hence tritely and pointedly applicable, to the workman, as aptly done by the learned Tribunal. In sequel, the impugned award, is, maintained and affirmed, and, in consequence(s) thereof, both the civil writ petition(s), are dismissed. Also, the pending application(s), if any, are disposed of.

CMPMO No. 420 of 2020

As aforesaid, since the instant CMPMO, is, also amenable for becoming decided, alongwith the Civil Writ Petitions, bearing No. CWPs No. 4844 of 2020 and 3597 of 2020, hence legality, of, the challenge made by the Bank to the order, made by the learned Senior Civil Judge, Palampur, District Kangra, on, 7.10.2020, is to be decided. As aforesaid, through the afore order, the learned Senior Civil Judge, after dismissing, the objection(s), filed by the Bank, against the execution petition, filed therebefore, by the Workman, where through, he sought implementation, of, the award, of, 9.7.2019, hence made by the learned Tribunal, hence issued a show cause notice, upon the Bank, as to why the Officers concerned, be not sent to Civil Imprisonment, or their property, be not attached.

8. Be that as it may, the mandate borne in sub-Sections (9) and (10), of, Section 11, of, the Industrial Disputes Act, 1947, does for, resting the afore contention, warrant extractions, provisions whereof, are, extracted hereinafter:

“ 11. Procedure and powers of conciliation of Officers, Boards, Courts and Tribunals-

(9) *Every award made, order issued or settlement arrived at by or before Labour Court or Tribunal or National Tribunal shall be executed in accordance with the procedure laid down for execution of orders and decree of a Civil Court under order 21 of the Code of Civil Procedure, 1908 (5 of 1908)*

(10) *The Labour Court or Tribunal or National Tribunal, as the case may be, shall transmit any award order or settlement to a Civil Court having jurisdiction and such Civil Court shall execute the award, order or settlement as if it were a decree passed by it”.*

Provisions whereof, unveils, qua the afore provision, making an explicit statutory expression, where through, the award, of, the Tribunal concerned, is, made amenable for execution, alike the execution, of, a decree, of, a Civil Court, or explicit statutory expression(s), become(s) borne therein, for, an award, of, the Tribunal concerned, hence being executable, as a decree, of, the Civil Court, (a)through, compliances being made with the mandate, of, Order, 21, of, the Code of Civil Procedure, . Furthermore, for ensuring qua the afore mandate, borne in sub-Section (9), of, Section 11, of, the Industrial Disputes Act, 1947, becoming fully complied with, the Tribunal concerned, is, empowered to transmit any award, to the Civil Court, hence holding jurisdiction, to execute the

award concerned.

9. Even though, the learned Tribunal, had, through letter, of, 21.10.2019, transmitted the award, of, compulsory retirement, from service, made upon the workman, alongwith all consequential benefits, for its execution, to the Court, of, District Judge, at Palampur, however, the Court, of, District Judge, is not located at Palampur, but is located at Dharamshala, District Kangra. If so, the afore, is, an exemplifications, of, perfunctory(ies), on the part, of, the Tribunal (i) and also, since the consequential benefits, conferred upon the Workman, by the Tribunal, through its impugned award, appertain(s) to computation(s), of, pecuniary benefits, and, since the statutory authorization, bestowed upon the Tribunal, is to, transmit the award, to the Civil Court, hence holding completest jurisdiction, (ii) thereupon the afore statutory authorization, conferred upon the Tribunal, to transmit the apposite award, for its execution, to the Civil Court concerned also encompasses therewithin(s), the necessity, of, determination, of, executable pecuniary computation(s), being made by the learned Tribunal, necessarily, for, ensuring that qua therewith, the

transmittee Civil Court, does, also hold both the pecuniary, and, obviously, the territorial jurisdiction, for, its hence efficaciously executing the transmitted thereto hence award, for its execution, as a decree, of, the Civil Court. Contrarily, the learned Tribunal, has, in a slipshod and cursory manner, without determining the aforesaid facet, made letter, of, 21.10.2019, and, also the learned Civil Judge, Palampur, in a slipshod and perfunctory manner, and without ensuring pecuniary computation(s), of, the jurisdictionally executable, by it, of pecuniary values, of, the pecuniary benefits, conferred upon the workman, proceeded to make the impugned order, and, hence both are quashed and set aside. In sequel, the learned Tribunal concerned, is, directed to after ensuring hearing, to, all concerned, hence compute the pecuniary values, of, consequential benefits, conferred upon the workman, and, after its ensuring that the award made by it, is, un-executable, or enforceable, before any Civil Court, located at Chandigarh, is, directed, to, thereafter, make an appropriate order, in, accordance with law, and is also directed to thereafter make an order, within the ambit, of, sub-Section (9) and sub-Section (10),

of Section 11, of the Industrial Disputes Act, 1947.

10. Consequently, writ petitions No. 4844 of 2020 and 3597 of 2020, are, dismissed, and, CMPMO bearing No. 420 of 2020 is allowed. Also, the pending application(s), if any, are disposed of.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

- **27.11.2020**
Kalpana