

Government of West Bengal

Labour Department

I. R. Branch

N.S. Buildings, 12th Floor

1, K.S. Roy Road, Kolkata - 700001

No. Labr./ 593 ./(LC-IR)/11L-18/08

Date : 26.06.2019.

ORDER

WHEREAS an industrial dispute existed between M/s Peerless General Finance & Investment Company Limited, 13A, Dacres Lane, 1st Floor, Kolkata – 700 069 and Sri Tapan Kumar Dey, 1390/A/8, Kalyangarh, P.O. – Kalyangarh, Dist – North 24 Parganas, Pin – 743272 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Labour Court specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said Second Labour Court heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUE

1) Whether the present proceedings u/s 10(1B)(d) of the I.D. Act, 1947 is maintainable in law and facts ?

2) Whether the charges brought by the O.P. Company against the applicant was proper and justifiable in law ?

3) Whether the termination of the applicant from service is justified ?

4) What other relief, if any, is the applicant entitled to get as per the law and equity ?

AND WHEREAS the said Judge Second Labour Court has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Deputy Secretary
to the Government of West Bengal

30/2019

: 2 :

No. Labr./598/1(5)/(LC-IR)

Date : 26.06.2019.

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/s Peerless General Finance & Investment Company Limited, 13A, Dacres Lane, 1st Floor, Kolkata – 700 069.
2. Sri Tapan Kumar Dey, 1390/A/8, Kalyangarh, P.O. – Kalyangarh, Dist – North 24 Parganas, Pin – 743272.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

No. Labr./598/2(2)/(LC-IR)

Date : 26.06.2019.

Copy forwarded for information to :-

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No. 735 - LT dated 12.06.19.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Deputy Secretary

An application U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by **Tapan Kumar Dey**, residing at 1390/A/8 , Kalyangarh, P.O-Kalyangarh, Dist-24 Parganas (North), Pin-743272 against M/s. **Peerless General Finance & Investment Company Limited**, 13A, Dacres Lane, 1st Floor, Kolkata-700 069.

(Case No. 16 of 2008_U/s. 10(1B)(d) of Industrial Disputes Act, 1947)

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA

PRESENT: **SRI ARABINDA PANTI**, JUDGE
SECOND LABOUR COURT
KOLKATA.

Date: 11-06-2019

A W A R D

This case has been initiated by Tapan Kumar Dey, the applicant against M/s. The Peerless General Finance & Investment Company Limited.

The facts of the case in nutshell are that the applicant was a workman employed as a Senior Assistant by the Opposite Party/Employer. While he was in employment, he was served with a charge-sheet dated 26-05-2006 by the management of the Opposite Party wherein it was alleged that the applicant committed misconduct with mala fide intention of making unlawful gain by dishonest means by signing 17 cheques on various dates in the name of one Soma Karmakar and Rekha Raha instead of the original certificate holders.

The applicant replied against that charge-sheet on 31-07-2006 categorically denying all material allegations level against him. It was specially asserted that all his signatures as appearing in the alleged forged cheques were forged and the applicant never signed in those cheques. The applicant prayed for verification of the



signature appearing on the cheques with his admitted signatures by hand writing expert but the company did not bother.

It is further stated in the application that the Opposite Party held a domestic enquiry. In the enquiry proceedings, the applicant time and again demanded even by filing an application on 02-03-2007 to produce some documents, but the company did not do so. Even the Enquiry Officer did not ask the management to submit those documents. Even the alleged signatures on the cheques were not verified by handwriting expert and/or by forensic test. Ultimately the Enquiry Officer submitted his report on 26-08-2007 wherein the workman was found guilty of all the charges brought home against him illegally and without taking into consideration of the evidences and the submission of the applicant.

It is further stated in the application that the disciplinary authority served a second show-cause notice, dated 29-01-2008 wherein it was clearly noted that the authority has taken decision to dismiss the applicant from service. In that second show-cause notice 72 hours were given to the applicant for submitting representation. Accordingly, the applicant submitted representation on 08-02-2008 wherein it was alleged that the Enquiry Officer should have to come to an independent findings. Ultimately, by Order dated 22-02-2008 the Opposite Party dismissed the workman from service with immediate effect.

It is categorically asserted by the applicant that the Enquiry Officer did not apply his mind in adjudging the case taking into consideration the evidences of both the parties. He only depended on the evidence of Opposite Party witnesses. His all conducts in the proceedings were all through in favour of the Opposite Party. The Enquiry Officer did not take any effort to verify the signatures of the applicant appearing on the alleged cheques with his admitted signatures appearing in the U.B.I Bank signature card. Reasonable opportunities were not given to the applicant for his self defence.



It is further averred in the application that a conspiracy was hatched up to protect some employees whose names were also included in the First Information Report and in dispute. But strangely, those persons were made witness and even one person whose signatures also appeared in the cheques, he is the complainant in the police case. Sri Amal Kumar Raha was the main accused who made a declaration addressing to the Director of the company on 22-03-2006 wherein he categorically denied about the signatures of the applicant. Some other cheques were also issued under the alleged signature of Sri Jiban Dhar and Amal Kumar Raha, but Mr. Dhar has not been made an accused on the other hand he has been made a witness. The management instead of producing the signature card of U.B.I, Habra Branch had produced the signature card of U.T.I which is of no consequence and significance in the present case.

It is further stated in the application that Sri Amal Kumar Raha admitted by a letter that he had taken Rs. 40,597/- by forging the signature of Sri Jiban Dhar and the same amount was returned by him on 20-03-2006. But no action was taken against Amal Kumar Raha and Jiban Dhar. It is further stated that on scrutiny of cheque list it appeared that cheque No. 537601 was drawn on 17-12-2003, but cheque bearing No. 537603 was drawn on 17-12-2005 and payment was made by the bank in respect thereto when the applicant was already transferred to Bongaon Branch.

The applicant has given more emphasis on the enquiry proceedings where the Enquiry Officer from the very inception performed his role favouring the Opposite Party. He did not consider the equity of justice. The disciplinary authority without ascertaining any cogent reason mechanically passed the order of dismissal. The applicant by filing this case has prayed for reinstatement in service with full back wages.

The Opposite Party entered appearance in this case and filed written statement contending inter alia the material allegations brought against it and denying all the statement made by the applicant.

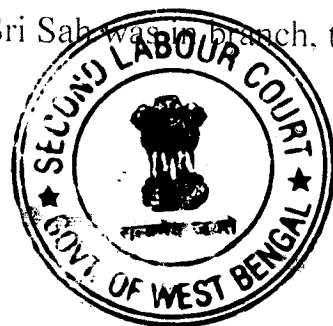


According to the defence case the instant case is not maintainable as per the Industrial Disputes Act, since the pre-requisites of invoking the provisions of Section 10(1B)(d) have not been satisfied and there was no material before the conciliation officer and as the same is based on incorrect assumption.

It is the further case of Opposite Party that the dismissal of the applicant was effected by holding an enquiry inconformity with the principles of natural justice. The applicant denied his signature on the cheques but it is apparent on the face of the record that the cheques were signed by the applicant. Therefore, his denial on signing the cheques is totally baseless, rather it appears that the said cheques were signed by the applicant for wrongful gain for himself and wrongful loss to the Opposite Party. No relevant documents were withheld by the company, on the contrary, Mr. Dey inspected all the documents. It is baseless to allege that the Enquiry Officer had all along taken a very discriminatory or partisan attitude or acted as an agent of the Opposite Party. The signature of Mr. Dey on the cheques are so glaring that it hardly required for any expert opinion. Consequently, the plea of verification by handwriting expert has no basis at all.

It is further denied that the Enquiry Officer had avoided the contentions, submissions or evidence of the applicant. It is baseless to allege that the enquiry report is perverse piece of document. It is incorrect to contend that the decision of the disciplinary authority is solely based on the report of the Enquiry Officer, or that there was no independent application of mind as alleged by the applicant, rather the disciplinary authority had concurred with the findings of the Enquiry Officer. It is the baseless allegation that the Enquiry Officer did not consider the evidence of the applicant or did not brought all relevant documents at the proceedings, or that the applicant was not given opportunity of self defence.

The Opposite Party has denied and disputed that the evidence of Sri Awadesh Kumar Sah is false. The evidence of Sri Sah has been brought to project in a distorted way. If some of the cheques were drawn when Sri Sah was in branch, that



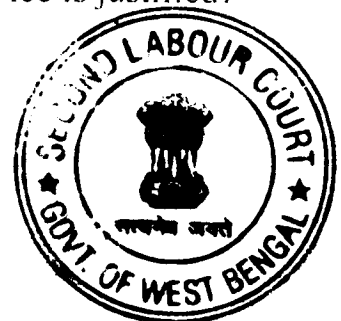
itself would amply show that he was very much well conversant with the signature of the applicant. The plea of being on leave when cheques were drawn is a calculated move to cover up the misdeed. It is denied and disputed that conspiracy was hatched up to protect some persons whose names were also included in the FIR. Any irregular act on part of the other person cannot be a ground that Sri Dey has not committed misdeed as alleged, although the same is glaring and self evident. The plea of not signing on the cheques is nothing but an attempt to escape from the facts of defalcation and misappropriation.

It is further depicted in the written statement of the Opposite Party that the plea taken by the applicant that the signature card of U.T.I, Habra Branch was of no consequence, or that the attitude of management was against granting proper opportunities of self defence are totally false, rather the applicant was given reasonable opportunity of self defence. The plea taken by the applicant that some other cheques were signed by Sri Jiban Dhar with Amal Kumar Raha that cannot absolve Sri Dey from the blatant act of defalcation and miss-appropriation. No one was spared in the matter of defalcation and miss-appropriation.

The Opposite Party by filing this written statement has clearly stated that Sri Tapan Kumar Dey, the applicant of this case by signing on cheques as stated has defalcated and misappropriated the money of the Opposite Party and his misdeed is well established and accordingly his prayers are to be rejected.

Upon pleadings of the parties, the following issues were framed for adjudication:

1. Whether the present proceedings U/s. 10(1B)(d) of the I. D. Act, 1947 is maintainable in law and facts?
2. Whether the charges brought by the O. P. Company against the applicant was proper and justifiable in law?
3. Whether the termination of the applicant from service is justified?



4. What other relief, if any, is the applicant entitled to get as per the law and equity?

DECISION WITH REASONS

ISSUE NO. 1:

This issue is taken up alone for convenience of discussion and taking decision as it relates to the point of maintainability.

Ld. Advocate for the Opposite Party during course of his argument argued that this case is not maintainable either in law or in facts. In arguing so, he submitted that the applicant did never deny that he was not the authorized signatory of the company. Moreover, according to him, the Opposite Party Company hold domestic enquiry properly wherein this applicant was hold liable for signing on cheques issued to one Rekha Raha and Soma Karmakar instead of actual recipients. This misdeed if so facto proves that Sri Tapan Kumar Dey, the applicant of this case misappropriated the money of Opposite Party dishonestly. In the domestic proceedings the principles of natural justice were followed by the Enquiry Officer and his findings were based on best reasoning. Therefore, the enquiry proceedings were followed in fare and proper way and the report was submitted in compliance with the principles of natural justice. Therefore, this case is not maintainable.

On the other hand, Ld. Advocate for the applicant argued that the Opposite Party illegally and being bias dismissed Sri Tapan Kumar Dey from his service. The Enquiry Officer was bias from the very beginning and he did not follow the principles of natural justice. He did not afford the applicant for his self defence. All along the applicant took the defence that he did not sign on those cheques but the Enquiry Officer did not take any endeavor to



ascertain the signatures appearing on the cheques by any handwriting expert or forensic test with his admitted signatures.

Admittedly, according to Ld. Advocate for the applicant charge-sheet was issued, domestic enquiry was held and domestic enquiry report was submitted, but all these were eyewash. Even, according to him second show-cause notice was also issued but it was also to observe the formalities. In fact, no natural justice was followed. Therefore, according to him this case is very much maintainable.

After hearing both sides it appears that being aggrieved and dissatisfied with the enquiry proceedings and enquiry report and dismissal from service, the applicant has come before this court praying for renderings justice. That apart, this court vide its order No. 83, dated 22-04-2016 hold that the enquiry report is valid and it was accepted. Challenging the same the applicant moved before the Hon'ble High Court, Calcutta in Writ Petition No. 4332(W) of 2017. In disposing of the said Writ Petition, the Hon'ble Mr. Justice Dr. Sambuddha Chakraborty was pleased to hold that **"..... I decline to entertain the Writ Petition and the Writ Petition is dismissed. The Labour Court is directed to proceed with the matter and to conclude the hearing as early as possible. I make it clear that whatever has been a finding of the Labour Court as a preliminary issue shall be the subject matter of challenge against the final award, if any such occasion in future arises....."**

In view of the above, this court does not hesitate to hold that this case is very much maintainable. Thus, this issue is deposed of.

ISSUE NO. 2 & 3:

These two issues are taken up together for brevity of discussion and taking decision, as these two issues are co-related.



Sri Tapan Kumar Dey, the applicant of this case was in employment under the Opposite Party Company as a Senior Assistant. He was the authorized signatory of cheques on behalf of the Opposite Party. It is also admitted position that the applicant was issued with a charge-sheet on 26-05-2006 on the allegations that as if the applicant had signed on 17 cheques on various dates in the name of one Soma Karmakar and Rekha Raha instead of original certificate holders. It is further admitted fact that the applicant replied to that charge-sheet, and domestic enquiry was held wherein he was found guilty. It is further admitted position that the Opposite Party issued second show-cause notice and ultimately the applicant was dismissed from service.

The bone of contentions are that:-

- i) As to whether the applicant signed on 17 cheques and in the name of Soma Karmakar & Rekha Raha instead of original certificate holders.
- ii) As to whether the Enquiry Officer followed the principles of natural justice and/or gave opportunity for self defence, and/or the report of the Enquiry Officer suffers from irregularity and biasness. These contentions are discussed in later part.

The applicant all along took the contention that he did never sign on those alleged cheques. He had no nexus with alleged offence. Even, according to him, some cheques were signed on the date when he was on leave and on transfer. The Enquiry Officer did not give him minimum opportunity of self defence as so-called signatures on alleged cheques were not verified by handwriting expert or forensic test.

The applicant took all-along the defence of non-production of the signature card of U.B.I, Habra Branch and not getting it verified by handwriting expert along with the signatures appearing on the alleged cheques tantamounts to unfair Labour Practice as per the applicant, the Enquiry Officer did not follow the principles of



natural justice and ultimately depending on that report, he was dismissed from service.

On the basis of cases made out by both sides, this court vide its order No. 83, dated 22-04-2016 decided that the enquiry proceeding along with enquiry report is valid and accepted in the eye of law.

The applicant challenged the said order before the Hon'ble High Court in Writ Petition No. 4332 (W of 2017). The same was dismissed with the direction upon this court to proceed with matter and to conclude the hearing as early as possible. Thereafter, the applicant filed a petition before this court U/s. 11A of the Industrial Disputes Act, 1947 with a prayer to adduce evidence afresh and to reconsider the decision passed by this court in order No. 83, dated 22-04-2016. The said petition was rejected by this court. However, argument was heard and both sides furnished their written notes of argument respectively.

Ld. Advocate for the workman relied upon decisions held in:-

- i) (2008) 12 Supreme Court cases 170 (DAMARA VENKATA MURALI KRISHNA RAO-VS-GURUJU PALLI SATVATHAMMA)
- ii) (2003) 11 Supreme Court cases 241 (PAWAN KUMAR-VS-STATE OF HARIANA).
- iii) AIR 2006 SUPREME COURT 3475 (M.V.BIJLANI-VS-UNION OF INDIA & ORS.)
- iv) AIR 2007 SUPREME COURT 1370 (M/s. Sri Ram Industries Enterprises Ltd.-Vs-Mahak Singh & Others).
- v) (2017) 4 Supreme Court cases 75 (MANAGEMENT OF STATE BANK OF INDIA-VS-SMITA SHARAD DESHMUKH AND ANOTHER).



- vi) (2012) 3 Supreme Court cases 178 (KRUSHMAKANT B. PARMAR-VS-UNION OF INDIA & ANOTHER).

On the contrary Ld. Advocate for the Opposite Party relied upon decisions held in:-

- i) 2006 (11) SCALE 559 = CDJ 2006 SC 1078 (M/s. Tata Engineering & Locomotive Company Limited vs. N. K. Singh).
- ii) 2006 (11) SCALE 316 = CDJ 2006 SC 928 (Depot Manager, APSRTC vs. Raghuda Siva Sankar Prasad).
- iii) (1988) 1 LLN 9= CDL 1987 SC 553 (Christian Medical College Employees' Union and Another vs. Christian Medical College Vellore Association and Another).
- iv) [2008 (2) SCALE 158] = CDJ 2008 SC 150 (Employees in relation to the Management of West Bokaro Colliery of M/s. TISCO Ltd. vs. The concerned workman, Ram Pravesh Singh).
- v) [2002 (4) CHN 708] = CDJ 2001 Cal Hon'ble High Court (Calcutta Jute Manufacturing Co. Ltd. vs. State of West Bengal and Ors.
- vi) [2013 (12) SCALE 157] = CDJ 2013 SC 985 (Devasab Husainsab Mulla vs. North West Karnatak Road Transport Corprn.
- vii) [2013 (4) SCALE 579] = CDJ 2013 SC 216 (Nirmala J. Jhala vs. State of Gujrat).
- viii) [2007(5) SCALE 637] = CDJ 2007 SC 478 (Depot Manager, APSRTC vs. B. Swamy).
- ix) 2008 LLR 758 = CDJ 2008 Ker Hon'ble High Court 187 (Federal Bank Employees Union, Aluva vs. Federal Bank of India, Aluva & Ors.).
- x) 2018 LLR (2) = CDJ 2017 SC 1245 (Management of Bharat Heavy Electricals Ltd. vs M. Mani & Anr.)
- xi) 2010 (9) SCALE 60 = CDJ 2010 SC 780 (Kalabharati Advertising Versus Hemant Vimalnath Narichania & Others).
- xii) 2010 (4) SCALE 92(Union of India & Ors. vs. Ashoka Kumar).



xiii) 2008 ASCW 1908= CDJ 2008 SC 327(State of Punjab & Another vs. Hari Singh).

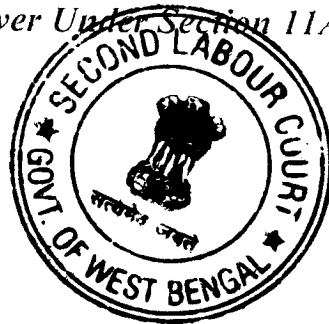
All the above mentioned decisions of the various Hon'ble Court's except the decision referred in Sl. 13, relied by the Opposite Party are related to Section 11A of the Industrial Disputes Act. In the instant case, the applicant challenged the decision of this court before the Hon'ble High Court and it was dismissed.

Thereafter, by filing a petition U/s. 11A of the Act, the applicant wanted to produce some documents and prayed for reconsideration of the award passed in Order No. 83, dated 22-04-2016 holding the enquiry report as valid.

Ld. Advocate for the Opposite Party by referring the above decisions time and again submitted that this court was once pleased to hold that the enquiry report is valid and proper, in that event the self same court cannot interfere with its own order. He further submitted that after introduction of Section 11A in the Industrial Disputes Act, 1947 a discretionary power has been conferred upon the forums created under the said Act to interfere with the quantum of punishment imposed by the management in an appropriate case. After the said amendment the Hon'ble Supreme Court on number of occasions had dealt with the aspect of exercise of discretionary power under Sec. 11A by the said forums and, accordingly, in different judicial pronouncements following views have been expressed time to time.

Section 11A – Power conferred to be exercised judicially and where the punishment is highly disproportionate:

Section 11A which has been introduced since then into the Act which confers the power on the Industrial Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or Labour Court. The power Under Section 11A of the Act has



to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of management Under Section 11A of the Act, only when it is satisfied that the punishment is passed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision.

Section 11A of the Act also speaks that it is to be exercised judicially and where the punishment is grossly-disproportionate-punishment of dismissal may cause hardship upon the employee but at the same time discipline of the organization is required to be maintained.

The aforementioned decisions of various Hon'ble High Courts and the Hon'ble Appex Court clearly speak that in exercising Section 11A of the Act, no doubt it is open to the Tribunal to substitute one punishment by another. It is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised when, inter-alia, it is found to be grossly disproportionate. Such interference at the hands of Tribunal should be, inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment. The Hon'ble Courts have also been pleased to pass their views that dismissal from service puts an employee to a great hardship but that would not mean that a grave misconduct would go unpunished. Maintenance of discipline of an institution is equally important.

Ld. Advocate for the applicant time and again argued that in the second show-cause notice, the disciplinary authority had already made up its mind to dismiss the workman from service and as such no opportunity was given to the workman with regard to the guilt and on that account the second show-cause notice is based on which the final order was passed, it is absolutely bad in law and that has been held in



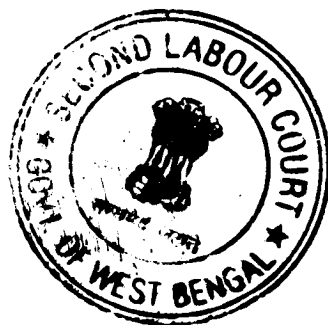
the unreported judgment passed in the case of **Bivekananda Das-vs-India Iron Steel Company Ltd. (W.P No. 15645(W) of 2001)**.

Ld. Advocate for the petitioner further argued that the disciplinary authority has to give reasons of its own as to how the petitioner was found guilty. But in the instant case no such reasons have been assigned. The order of dismissal was passed mechanically and the second show-cause notice was served to preserve the law in this regard only. That apart, according to him the applicant all-along took the defence that he did not sign on the alleged cheques. His signatures on the signature card of U.B.I are different from the signature card of U.T.I Bank of Habra Branch. The applicant submitted an application to the enquiry officer for verifying his signatures on the alleged cheques by an expert, but the enquiry officer did not bother to consider his prayer.

Moreover, according to Ld. Advocate for the applicant this court while passed an order in No. 83, dated 22-04-2016 did not consider the relied upon decisions referred from his side.

Now, this court carefully goes through its order No. 83, dated 22-04-2016 and it appears that the relied upon decisions referred by the applicant held in **(2003) 11 Supreme Court cases, 241** and **(2012) 3 Supreme Court cases, 178** were clearly discussed by my predecessor in court. Moreover, the decision reported in **2011 (10) SCALE 93** and **2013 (4) SCALE 579** were also clearly discussed and accepted.

In fact, during the course of domestic enquiry the signatures of the applicant in signature card kept with U.B.I. Habra Branch were not tested by finger print expert/hand writing expert, although the applicant submitted a letter to that effect on 15-11-2007, which has been marked as Exbt.4. The enquiry officer concluded his enquiry on 20-11-2007. Therefore, the enquiry officer could have taken an effort for verifying the signatures as made in the prayer of Exbt.4. Though the Hon'ble Appex



Court in the case of **Commissioner of Police, New Delhi-vs-Narender Singh [2006(4) SCALE 161=CDJ 2006 SC 306]** has taken the view that "it is now well settled that the provisions of Evidence Act are not applicable in a departmental proceedings."

But ultimately, at a later stage the disputed signatures were verified by document expert and a report was submitted to that effect by Mr. H. C. Ganguly, document expert, vide his letter No. EX /30/08, dated 18-09-2008. This report was prepared and submitted in a right way. But the applicant did not dispute and challenge the said report, rather it was marked as Exbt.G on consent.

This report was submitted on the basis of the prayer made on 10-09-2008 vide letter No. ERO-1/TKD & CSI/08 of Sri D.B.Saha, Regional Manager, Eastern Region, Unit-I, The Peerless General Finance & Investment Company Ltd., 13A Dacres Lane, 1st Floor, Kolkata-69. The above mentioned report (Exbt.G) clearly shows that Mr. Ganguly had been to United Bank of India, Habra Branch and got three cheques in original as follows:

1. cheque No.537601 dated 17-12-2003 for Rs. 20,793/- having a short signature on it and that was marked by him as 'X'.
2. cheque No.484882 dated 05-09--2003 for Rs. 35,243/- having a short signature on it and that was marked by him as 'Y'.
3. cheque No.484884 dated 04-10-2003 for Rs. 22,475/- having a short signature on it and that was marked by him as 'Z'.

This expert also obtained standard short signatures of Tapan Kumar Dey from key movement register from 02.09.1994 and those were marked as S, S/1 and S/2. After comparing the short signatures marked as 'X' 'Y' 'Z' tallying with the short signatures marked as S, S/1, S/2 came to conclusion that "the signatures marked as X,Y, Z agree with the standard signatures marked in 'S' series. In conclusion the expert opined that the disputed signatures marked X,Y, Z are all in



one hand and those were definitely written by the writer of the standard signatures marked as S, S/1 and S/2".

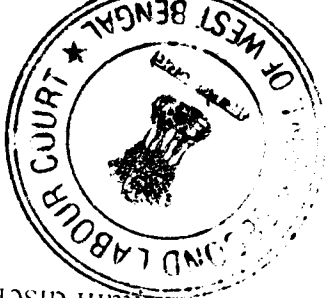
The above mentioned three cheques which were handed over to the expert are in the list of seventeen cheques and the said list has been marked as Exbt.A. Therefore, it is crystal clear that Mr. Tapan Kumar Dey, the applicant of this case who was the then authorized signatory of the Opposite Party had signed on those cheques which were drawn in favour of one Rekha Raha in lieu of the original recipients.

The main argument was embarked upon non-signing of the alleged cheques by the applicant, but the said defence is infructuous and baseless. At least three disputed cheques have been compared by hand writing expert and the report of the expert goes against Mr. Dey. His dishonesty is well established. Therefore, the cited decision from the side of applicant reported in **(2008) 12 Supreme Court cases 170 (DAMARA VENKATA MURALI KRISHNA RAO-VS-GURUJU PALLI SATVATHAMMA)** and **(2003) 11 Supreme Court cases 241 (PAWAN KUMAR-VS-STATE OF HARIANA)** have no application in this case.

Moreover, as per the decision reported in **2008 ASCW 1908= CDJ 2008 SC 327(State of Punjab & Another vs. Hari Singh)**, *"..... there is nothing to indicate that the respondent suffered any prejudice on that account. It is therefore impossible to hold that the departmental enquiry was vitiated due to non-production of documents asked for by the respondent and on that basis no punishment could be imposed against him".*

It appears from the submission of L.d. Advocate for the applicant that the applicant wants to review the order No. 83 passed by this court on 22-04-2016. This approach on the part of the applicant is totally unsustainable in the law since this court is a creature of statute being Industrial Disputes Act, 1947. Secondly, neither





Narichania & Others [2010 (9) SCALE 60 = CDJ 2010 SC 780].

the provisions enshrined in the said Act of 1947 nor the West Bengal Industries Disputes Rules, 1958 empowers this court to review its own order. Moreover, it is settled law that no forum created under a statute can exercise the power of review unless the same is specially provided in the said statute or the rules. A reference may be made to the case of **Kalabharati Advertising Versus Hemant Vimalnath**

Many other arguments were advanced from the side of applicant, such as Awadesh Kumar Sah was not posted at the Branch when the alleged cheques were signed. It was also argued that Mr. Amal Kumar Raha was involved in making collusion with the Officers of U.B.I., Habra for passing the cheques drawn more than Rs. 25000/- . More so, it is argued that Sri Awadesh Kumar Sah and Jiban Dhar are signatories of cheques No. 001762, dated 04-08-2005, but no action was taken against them. It was also alleged that the signature of Mr Tapan Kumar Dey in the U.B.I Bank is different from his signature in the signature card of U.T.I Bank. More even some cheques were issued when the applicant was on leave and was also transferred from Habra Branch to Bongaon Branch. The Opposite Party has adopted choose and pick up policy adamantly to unnecessarily harass the applicant, to defame him and to give him financial hardship which is against the natural justice.

Ld. Advocate for the Opposite Party further argued that it is the choice of the Opposite Party and there, this court cannot dictate against whom the action is to be taken. The defalcation of money and misappropriation of the same have been committed by applicant. He should not be given indulgence and punishment of dismissal should not be interfered with, as submitted by Ld. Defence Counsel.

Ld. Advocate for the Opposite Party submitted that it is fact some cheques were issued when Mr. Tapan Kumar Dey was transferred from Habra Branch to Bongaon Branch and he was on leave. But it is a calculated move to cover up the misdeed. This argument cannot be thrown out by this court at a glance, while Exbl.C is the palpable prove of misdeed of the applicant. To maintain discipline and honesty

in a concern are to be given more stress. In fact, termination from service of the applicant has put him in great financial hardship, but his misdeed and dishonesty like misappropriation of money of the Opposite Party cannot be over looked and ignored so that other employees do not dare to adopt such malpractice in future. It is a deterrent theory of law.

Ld. Advocate for the applicant time and again argued that in order No. 87 dated 22-04-2016 the Ld. Predecessor of this court did not properly consider the decision reported in **(2012) 3 Supreme Court cases 178, AIR 2006 SC 3475 and (2003) 11 Supreme Court cases, 241.**

This court now goes carefully through the above mentioned decisions of the Hon'ble Appex Court. Basically, the Hon'ble Appex Court in the first referred decision and in **AIR 2006 SC 3475** was dealing with the fact that the charge sheet was vague and on a consideration thereof the Hon'ble Court has expressed its view. The cited judgment has got no manner of applicability purely on the simple reason that it is not the case of the applicant that the charge sheet issued to him was vague one. Moreover, the applicant could not establish that the report was based on surmise and conjecture or the enquiry officer has refused to consider the relevant facts. So far as burden of proof is concerned, the enquiry officer never made an endeavour to shift it on the applicant, rather the enquiry officer on the basis of materials on record has come to the conclusion which cannot be said as against the principles of preponderance of probabilities.

In the afore mentioned second referred decision and the decision referred before the present court reported in **(2003) 11 SCC 241**, the Hon'ble Court has been pleased to express its view on Indian Penal Code. It has already been mentioned in the case of *Nirmala. J. Jhla (Supra)* that the standard of proof between a criminal case and a departmental proceedings are absolutely on different footings. In respect of a criminal proceedings, the charge sheet is required to be proved to the hilt but in respect of a departmental proceedings and/or a domestic enquiry, the standard of



proof is based on the principles of preponderance of probabilities. In the instant case it has already been discussed in detail that there was no requirement of verification of the signature of the applicant, specially when the applicant was one of the authorized signatories of the company and the cheques in question bore the signature of the applicant. More so, that bank authority has acted on it by honouring the cheques. That apart, this court has discussed about the report of the hand writing expert which has been marked as Exbt.G on consent though this report was obtained at a belated stage. It was prepared on 18-09-2008 and the instant case was initiated on 12-06-2008. The applicant did not challenge this report, rather on his consent it was exhibited in this case to take its evidentiary value.

After hearing both sides on the above mentioned points it is to recapitulate that this court has come to a decision considering Exbt. G that Mr. Tapan Kumar Dey's signatures on three cheques had tallied with the signatures appearing on the signature card under the U.B.I Bank. Moreover, it is to be said that the bank authority could not pass/honour the cheques if the signatures on those cheques of the authorized signatory could not tally with the signature appearing on the signature card. In this regard Mr. Dey has taken the defence that the bank authority in passing/honouring the alleged cheques had entered into a collusion with the management of the Opposite Party. But Mr. Dey did not lodge any FIR in this regard. His bona fide in this regard is absent.

Now this court applies its mind on the decision of Hon'ble High Court, Calcutta passed in **W.P.No. 15645(W) of 2001(Bibekananda Das-vs-The Indian Iron Steel Co. Ltd.)**. This judgment was based on show-cause notice against the petitioner issued by the employer proposing for a punishment discharging the petitioner from service. This decision is not applicable in the instant case as the domestic enquiry was held properly observing all formalities. Depending upon the report of the enquiry officer and also considering the magnitude of guilt, the applicant was dismissed from service by the management of the Opposite Party.



In view of the above, this court does not hesitate to hold that the charges brought by the O.P against the applicant was proper and justified and the termination of the applicant from his service by the O.P. is also justified.

Thus, these two issues are decided against the applicant.

Issue No. 4

This only remaining issue is taken up for discussion and taking decision. The vital two issues i.e. issue nos. 2 & 3 have been decided against the applicant holding that the termination of the applicant from service after proving the charges brought home against him is justified. Then the question of awarding relief does not arise, mainly while the charge was misappropriation of money of the employer.


In view of the above, this issue is disposed of accordingly.

Hence, it is

Ordered


that the instant petition U/s. 10 (1B)(d) of Industrial Disputes Act, 1947 is hereby rejected on contest but without cost. This is the award passed by this court.

Dictated and corrected by me


Judge

Judge
Second Labour Court




(Arabinda Panti)
Judge, 2nd Labour Court,
Kolkata.

Judge
Second Labour Court