

# SUPREME COURT OF INDIA

Canara Bank Ltd

Vs.

Anant Narayan Surkund

22.04.1963

## JUDGMENT:

### WANCHOO J.-

These appeals by special leave arise from the orders of the Central Government Labour Court, Delhi, and will be dealt with together :as they raise the same point. Appeals Nos. 731 to 752 arc by the Canara Industrial and Banking Syndicate Limited while Appeal No. 787 is by the Canara Bank Limited. In all these appeals there were applications by the employees of the two banks under s. 33-C (2) of the Industrial Disputes Act, No.14 of 1947, (hereinafter referred to as the Act), which have been allowed by the tribunal.

We shall give the facts in appeal No. 787 in detail. The respondent in that appeal is a clerk employed by the bank at its Bandra branch and has been working there since his appointment in October 1953. The respondent claimed that he was entitled to a special allowance of Rs. 15/- per month admissible to cashiers in-charge of cash in pay offices in accordance with para 164(b) (7) of the All India Industrial Tribunal (Bank Disputes) Award, (popularly known as the Sastry award). He further claimed that he worked as cashier in-charge of cash at Worli and Bandra branches of the bank and was entrusted with the sole charge of handling cash as there was nobody else to assist him. He was doing the work both of receiving and paying and was solely responsible in respect thereof to the bank. As such he was entitled to the special allowance of Rs. 15/- per month under the Sastry award, but the bank did not pay him the amount. The respondent therefore prayed that the benefit due to him may be computed in terms of money and necessary order passed thereon.

The bank resisted the claim of the respondent and its case was (firstly) that such an application was not entertainable under s. 33-C (2) of the Act and the labour court had no jurisdiction to decide it, (secondly) that the respondent was working at a branch and not at a pay office and therefore was not entitled to any special allowance under para 164 (b) (7) of the Sastry award, and (thirdly) that in any case the respondent cannot be said to be a cashier in- charge of cash at the branch where he was working and therefore was not entitled to any allowance. The bank's contention in this connection was that none of its employees was solely or singly in-charge of cash at any of its branches and

therefore the respondent could not claim any special allowance, particularly as he was merely a routine clerk even though he was handling cash.

The tribunal went into the evidence as to the duties of Shri A.N. Surkand respondent and found that the respondent was doing the combined work of both receiving and paying cash. It relied in this connection on a decision of Shri jeejeebhoy in a reference in *Dev Karan Nanjee Banking Co. v. Workmen* (1) under s. 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955, and held that as the respondent was the sole clerk in the branch doing the work of both receiving and paying cash and was thus in-charge of the cash of the branch, he would be entitled to the special allowance provided for cashiers in-charge of cash at pay offices. It therefore passed an order in favour of the respondent.

There is no doubt that the respondent, Anant Narayan Surkand, was the sole paying and receiving clerk in the bank's branch and there was no other clerk working in the cash department. The manual of instructions issued by the bank shows exactly what the procedure is in the matter of dealing with cash. According to this manual, at the commencement of

(1) Central Government Industrial Tribunal (Bombay) No. 23 of 1959.

the day's business, the bank's strong-room is opened by the Agent and the second key-holder who are lit joint charge with independent keys, of what may be called the double lock. An estimate of the day's probable requirement is made and funds are withdrawn accordingly. The amount so withdrawn is taken by the shroff (i. e. paying-cum-receiving clerk). The box containing the shroff's overnight cash balance (single lock) is also taken out of the strong-room and is handed over to the shroff, who is to count the balance in the single lock box when receiving it in the morning. At the close of the day's business, the Agent takes over the cash held by the shroff. The cash under single lock is also to be checked in the presence of the shroff. Surplus cash is returned to the Agent and all entries in the shroff's cash book relating to sums taken out and placed in the double lock are initialed by the Agent. These instructions show exactly what the shroff (i.e. paying-cum-receiving clerk) has to do during the course of the day. He receives first thing in the morning the amount in the single lock and such further sums as may be withdrawn from the double lock. He carries on both receiving and paying transactions during the course of the day with the help of the cash put at his disposal in the morning. At the end of the day he has to give an account to the Agent and if the Agent thinks that there is surplus cash after day's transactions he may withdraw the surplus cash from the single lock and put it in the double lock. Thus throughout the day the receiving-cum-paying clerk is in-charge of the cash in the single lock and has to account for it at the end of the day. There is no evidence in appeal No. 787 as to who keeps the key of the single lock box, though in the other group of appeals where also the facts are similar, we have the further evidence that the key of the single lock box is kept by the paying-cum-receiving clerk, whose duties are the same as the duties of the shroff (i. e. paying-cum-receiving clerk) in appeal No. 787. It is on this evidence that we have to determine whether the Central Government Labour Court was right in coming to the conclusion to which it did. The question whether such an application under s. 33C (2) of the Act was entertainable by the labour court and whether that court had jurisdiction to decide it has been considered by this Court in *Central Bank of India Limited v. P. S. Rajgopalan* (1). It has been held there that an application of this kind is maintainable and therefore the contention of the banks in this behalf must fail.

We are further of opinion that there is no force in the second contention of the banks either. It is true that para 164 (b) (7) of the Sastry award speaks of cashiers in-charge of cash at pay offices. We

recognise that strictly speaking a branch of the bank is not the same thing as a pay office; but the question whether the provision of para 164 (b) (7) would apply to a branch was referred to Shri jeejeebhoy for clarification under s. 6 of the Industrial Disputes (Banking Companies) Decision Act, 1955, (XLI of 1955) and Shri Jeejeebhoy held in 1959 that the use of the words "pay office" was not intended to have a restricted meaning referring only to those units which actually had the designation of pay office and would also apply to a branch in proper circumstances. Shri jeejeebhoy who made this clarification was the Chairman of the tribunal which heard the appeals from the Sastry Award and gave the decision which is known as the Labour Appellate Tribunal Decision (Bank Disputes). In these circumstances the clarification as it comes from such a tribunal should be accepted, particularly as it has stood unchallenged since it was given in 1959. The contention of the banks therefore that para 164 (I-) (7) would not

(1) [1964] Val. 3 S. C. R. 140.

apply in these cases because these are cases of branches and not of pay offices must fail.

We now come to the merits of the case. The main dispute that has been raised in that connection is that cashiers with whom we are concerned are not cashiers -in-charge of cash. The principal reason given on behalf of the banks in this connection is that no single person is in-charge of cash in a branch and therefore the workmen concerned are not cashiers in-charge. This argument in our opinion is disingenuous. What the banks contend is that the person in- charge of cash in a branch can only be the Agent and the second key-holder and no-one else. There is no doubt that the overall charge of cash, securities, jewellery and everything else in the double lock of the bank is that of the Agent and the second key holder; but that in our opinion does not dispose of the matter, for on that view there can be no cashier in-charge of cash in a branch however responsible may be his duty. We cannot therefore accept the argument on behalf of the banks that unless the cashier holds one of the keys of the double lock he cannot be said to be in-charge of cash in the branch. Generally speaking, no cashier would be holding the second key of the double lock. That would generally be held by some officer subordinate to the Agent except in the case of very small branches where there is no officer other than the Agent. On this view the clarification made by Shri jeejeebhoy to the effect that when cl. (7) of para 164 (b) used the words "Pay offices" it included branches also would become practically useless, for as we have said above it would be a very small branch indeed where there would not be a second officer to act as the second key-holder of the double lock. We are therefore of opinion that when cl. (7) of para 164 (b) uses the words "cashiers in-charge" it refers to charge of cash in the single lock and not charge of cash in the double lock, and it is in that view that we have to see whether the workmen concerned in the present appeals were in-charge of cash in the single lock.

On that point there can only be one answer in our opinion. We have already indicated the procedure that is in use in the branches with which we are concerned and that shows that the sole receiving-cum-paying clerk is the person in-charge of the single lock throughout the day when transactions are going on in the bank. He takes charge of the cash in the single lock first thing in the morning and gives over charge of the balance of cash in the single lock last thing in the day whereafter the single lock box is put in the double lock. It is true that thereafter such a cashier is not in- charge of the cash in the single lock after the single lock box is put in the double lock and theoretically the Agent and the second key-holder are in-charge of the single lock box as they are in-charge of whatever else there is in the double lock. But when cl. (7) of para 164 (b) refers to charge of cash it can only be such charge as is effective i. e. during the day while transactions are going on in the bank. Therefore

we are of opinion that where there is a single cashier in a branch who is doing both receiving and paying work he must on the strength of the procedure that has been given above be held in-charge of cash in the single lock within the meaning of cl. (7). Our attention in this connection was drawn to the clarification made by Shri Jeejeebhoy where the cashier was concerned with other duties also besides being incharge of cash in the sense which we have mentioned above. That may be so. But that in our opinion is immaterial, for cl. (7) only speaks of charge of cash; it does not speak of charge of securities or jewellery etc., that may be in the bank or of other duties. As soon as a person is in-charge of cash in a branch in the sense that he is the sole person in the cash department of the bank and is doing both receiving and paying work and takes charge of the cash in the single lock box first thing in the morning and makes over charge of the single lock box last thing in the evening, he must be held to be a cashier in-charge of cash in a branch office. the evidence in the present cases shows that the clerks concerned take charge of the single lock box first thing in the morning. Each of them is the sole clerk in the cash department doing both receiving and paying out cash throughout the day when the bank is open and makes over charge of the single lock box at the end of the day whereafter the single lock box is kept in the double lock. In these circumstances these clerks must be held to be cashiers in-charge of cash in a branch and as the words "Pay offices" used in cl. (7) have been clarified as including a branch these cashiers would be entitled to the special allowance mentioned in cl. (7).

We may in this connection refer to para 140 of the Labour Appellate Tribunal decision where after mentioning some equivalents the Appellate Tribunal said that it must be left to the banks to pay the appropriate allowances having regard to the duties and responsibilities of a post. The intention therefore of providing special allowance in para 164 (b) was to give something over and above the basic pay to those clerks who had higher duties and responsibilities as compared to routine clerks. We are of opinion that the test is satisfied in the case of cashiers with whom we are concerned, for they being the sole persons in the cash department, they are in-charge of the cash in the single lock box during the working hours of the bank and their duties and responsibilities are obviously of a higher nature than those of mere routine clerk.

Learned counsel for the appellants drew our attention to another part of para 164 of the Sastry Award which mentions the, categories of employees deserving special consideration and therefore fit for special allowance and those categories include cashiers (other than routine clerks). It is urged that when allowances were provided for cashiers in para 164(b), the intention was to exclude routine clerks in the cash department. These routine clerks in the cash department, it is urged, can be either paying clerks or receiving clerks or paying-cum-receiving clerks. As suming that is so, it does not follow that clerks like the cashiers in the present cases were not intended to be entitled to a special allowance. The reason for this special allowance for cashiers was that they were in-charge of cash and that, as we have explained means that they should be in sole charge of the cash in the single lock box. Now routine clerks in the cash department may be paying clerks, receiving clerks or even paying-cum-receiving clerks; but they would not be entitled to any allowance unless it was shown that they were in sole charge of the cash in the single lock in the particular branch. That can only happen when there is a single clerk doing the work of both receiving and paying in the cash department of a branch, for then only it can be said that he is in sole charge of the cash in the single lock box of the bank during the working hours. The words "other than routine clerks" used in para 164 (b) are made clear by four entries in the said paragraph, namely, clauses 3,4,5 and 6. These clauses provide for special allowance for head cashiers. Units of 5 clerks and above (cl. 3), for head cashiers, units of four clerks and below (c). 4), for assistant cashiers (above the level of routine clerks, Units of 5 clerks and above, (cl. 5), and for assistant cashiers (above the level of routine

clerks), units of four clerks and below, (cl. 6). These clauses will show that when the cash department consists of more than one person it is only one person, whether he is called the head cashier or assistant cashier, who would be in-charge and would get an allowance and not the other clerks working in the cash department who may be doing either receiving work or paying work or even both paying and receiving work. The reason why the clerks in the present appeals are entitled to allowance is that they are the sole clerks doing both receiving and paying work and they have to take charge of the single lock box in the morning and are responsible for it throughout the day and make over charge of the single-lock box in the evening when the bank closes for the day. It is only such sole clerks in the cash department of a branch who would be entitled to an allowance under cl. (7) of para 164 (b).

130 of the decision of the Labour Appellate Tribunal. It seems to have been urged before the Appellate Tribunal that receiving and paying cashiers should be granted special allowance; but that was rejected. It is urged that in view of this rejection it is not open to the workmen to urge that clerks like those with whom we are concerned in the present appeals are entitled to the allowance under para 164 (b) (7). In the first place it appears to us on reading para 130 that what was contemplated therein was receiving clerks and paying clerks and not receiving-cum-paying clerks. If that is so, the rejection of the allowance for receiving clerks and paying clerks will not affect the case of receiving-cum-paying clerks. But even if the words used include receiving-cum-paying clerks that does not again mean that receiving-cum-paying clerks who are in sole charge of cash should not get the allowance under para 164 (b). It is clear to us that when the case of receiving-cum-paying clerks was rejected by the Appellate Tribunal it referred only to those receiving-cum-paying clerks who were not in-charge of cash, for it may be possible for a bank to have a receiving-cum-paying clerk along with (say) a head cashier, and in such a case it is only the head cashier who is entitled to the allowance as he would be the person in charge and supervising the work of other clerks.

Lastly it is urged that if this interpretation is put on para 164 (b) (7), it will create some anomalies. It is pointed out in this connection that in cl. (4) head cashiers (units of four clerks and below) will get only Rs. 11/- in B class banks and Rs. 8/- in C class banks as special allowance while cashiers in-charge of cash like the clerks in the present appeals would get Rs. 15/- in a B class bank and Rs. 12/- in a C class bank as allowance. We however find no anomaly in the fact that cashiers in-charge of cash in pay offices (which words include branches) would get a little more as allowance than head cashiers in cl. (4) who have a unit of four clerks or less. It may well have been thought by the Sastry Tribunal that a sole cashier in-charge of cash in a cash department doing both receiving and paying work may have greater responsibility than a head-cashier with four or less clerks below him. In any case this difference in the allowance cannot in our opinion affect the clear meaning of para 164 (b) (7).

In appeals 731-752, the facts are exactly the same with this addition that the sole clerk doing receiving as well as paying work in the branches of this bank further has the key of the single lock box always in his charge while in appeal No. 787 there is no evidence as to who keeps the key of the single lock box after it is put in the double lock. That in our opinion makes no difference to the responsibility and in any case would be an added reason for the sole clerks in the cash department in appeals Nos. 731 to 752 getting special allowance.

We therefore dismiss the appeals with costs, one set of hearing fee.

Appeals dismissed.