

SUPREME COURT OF INDIA

Punjab National Bank

Vs.

Bernard Lakra

C.A.No.4386 of 2002

(R.V.Raveendran J.)

18.09.2008

ORDER

1. The respondent was an award staff working under the first appellant-Bank. On 5.3.1993 he was placed under suspension pending initiation of departmental enquiry in connection with alleged irregularities relating to his work as Godown Keeper. The bank issued a chargesheet dated 8.4.1993. Subsequently a FIR was lodged on 23.6.1993 by the Bank with Central Bureau of Investigation (CBI). CBI took up the investigation and filed a chargesheet before the Special Court on 30.9.1993.

2. The Bank paid one-third of pay and allowances as Subsistence Allowance during the first three months and thereafter, at the rate of half of the pay and allowance to the respondent. The respondent contended that the enquiry initiated against him was not delayed for any reason attributable to him and therefore on the expiry of one year from the date of suspension he was entitled to full pay and allowances, as subsistence allowance, in accordance with clause 5(a) (iii) of the Bipartite Settlement dated 8.9.1983.

“According to the Bank, clause 5(a) would apply where the investigation was not entrusted to or taken up by an outside agency; and in this case, as the investigation was in fact entrusted to and taken up by CBI - an outside agency, clause 5(a)(iii) was inapplicable. The Bank contends that the case of respondent was governed by para 557 of the Sastry Award (reiterated by para 17.14 of the Desai Award) and according to those provisions, the respondent was entitled to only half of pay and allowances as subsistence allowance.”

3. Feeling aggrieved the respondent approached the Orissa High Court for relief. The High Court allowed his writ petition by order dated 14.1.2002. It held that the Sastry Award/Desai Award were inapplicable and what was applicable was clause (5) of the Bipartite Settlement and in terms of it, the respondent was entitled to full pay and allowances as subsistence allowance. The said order of the High Court is challenged in this appeal by special leave.

The question for consideration is whether the respondent was entitled to only half of pay and allowances as subsistence allowance even after one year.

4. As the question for consideration depends upon the interpretation of the provisions of the Sastry/Desai Award and the subsequent Bipartite Settlement dated 8.9.1983, we may conveniently extract the same:

“Para 557 of Sastry Award (Reiterated by Para 17.14 of Desai Award) Having considered the matter in all its aspects, we think that suspension allowance should be granted on the following scale :

(1) For the first three months one-third of the pay and allowances which the workman would have got but for the suspension;

(2) Thereafter, where the enquiry is departmental by the bank, one-half of the pay and allowances for the succeeding months. Where the enquiry is by an outside agency, one third of the pay and allowances for the next three months and thereafter one-half for the succeeding months until enquiry is over.

Clause 5 of Bipartite Settlement dated 8.9.1983 In partial modification of paragraph 557 of the Sastry Award and paragraph 17.14 of the Desai Award, the following provisions shall apply in regard to payment of subsistence allowance to workmen under suspension in respect of the banks listed in Schedule 1.

(a) Where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI), subsistence allowance will be payable at the following rates :- (i) For the first three months one-third of the pay and allowances which the workman would have got but for the suspension.

(ii) Thereafter half of the pay and allowances.

(iii) After one year, full pay and allowances if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

Where the investigation is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances will be payable after six months from the date of receipt of report of such agency, or one year after suspension, whichever is later and in the event the enquiry is not delayed for reasons attributable to the workman or any of his representative.”

4. A careful reading of the above provision shows that clause (5) of the Bipartite Settlement dated 8.9.1983 dealing with subsistence allowance was not in substitution of para 557 of Sastry Award/Para 17.14 of Desai Award, but in modification of para 557 of Sastry Award/Para 17.14 of the Desai Award. In other words in areas not dealt with or covered by

clause (5) of Bipartite Settlement, the terms of Para 557 of Sastry Award/Para 17.14 of Desai Award continued to apply.

5. The scheme under Para 557 of Sastry Award/ Para 17.14 of Desai Award is as follows :

“(i) For the first three months whether the investigation or enquiry was departmental or by an outside agency, the workman was entitled to one-third of the pay and allowances as subsistence allowance.

(ii) Thereafter, where the enquiry was departmental, the workman was entitled to half of the pay and allowances as subsistence allowance so long as the suspension continued.

(iii) But if the enquiry or investigation was by an outside agency, the workman was entitled to the subsistence allowance to only one-third of the pay and allowances for the next three months (that is after the first three months) and thereafter half of pay and allowances.

Thus subsistence allowance during the suspension period was one-third during first three months when the enquiry was departmental, and during first six months if the investigation was by an outside agency. Thereafter, the subsistence allowance was one-half of the pay and allowances.”

6. The modifications brought about by clause (5) of the Bipartite Settlement, were as under:

“(i) Where the investigation was not entrusted to or taken up by an outside agency, the subsistence allowance was one-third of the pay and allowances for the first three months and one- half of pay and allowances thereafter. But if the suspension continued beyond one year and the delay was not attributable to the workman or his representative, full pay and allowances had to be paid as subsistence allowance during the period beyond one year.

(ii) Where the investigation was done by an outside agency and the said agency came to the conclusion not to prosecute the workman, he was entitled to full pay and allowances after six months from the date of receipt of the report of such agency, or one year after suspension whichever was later (provided the enquiry was not delayed for reasons attributable to the workman or his representative).”

7. Clause (5) of the Bipartite Settlement, while modifying the term relating to subsistence allowance in certain areas, did not provide for a situation where the investigation is done by an outside agency, and the said outside agency decides to prosecute the workman. Therefore, para 557 of the Sastry Award (reiterated in para 17.14 of Desai Award) continued to apply where the investigation was entrusted to an outside agency and that agency decided to prosecute the workman. If para 557 of the Sastry Award was applicable there can be no

doubt or dispute that the workman was entitled only to a maximum of half of the pay and allowances as subsistence allowance.

8. Learned counsel for the respondent sought to make a distinction. He submitted that where the order of suspension was passed in connection with a proposed departmental action and not with reference to an investigation by an outside agency, subsistence allowance will be on the basis that the enquiry was to be carried out departmentally. He submitted that in such an event, even if the investigation was subsequently entrusted to or taken over by an outside agency, the suspension will continue to be with reference to the departmental enquiry. He submitted that only where the suspension was itself with reference to an investigation or enquiry by an outside agency, the provisions relating to outside agency investigation would apply. He pointed out that in this case the order of suspension was passed on 5.3.1993 pending proposed departmental action. He also pointed out that when the matter was entrusted to an outside agency the order of suspension was not modified as being with reference to investigation by outside agency, but continued to be a suspension pending departmental action and therefore the case of respondent would fall under the first part of clause (5) of the Bipartite Settlement.

9. We are of the view that such an interpretation is not warranted. What is relevant is whether the investigation or enquiry was handed over or taken up by an outside agency, at any stage. Even where the suspension was initially with reference to a proposed departmental action, but subsequently, the investigation/inquiry is taken up by an outside agency, the provision with reference to outside agency will apply.

10. We are informed that in May 2006, the Special Court convicted the respondent and sentenced him to undergo imprisonment, and in view of the said conviction and sentence, the Bank dismissed him from service on 14.7.2006, in accordance with the rules. It is also stated that the respondent has challenged the judgment of the Special Court and the appeal is pending and the sentence has been suspended. These subsequent developments have no bearing on the issue considered by us.

11. We, therefore, allow this appeal, set aside the order of the High Court and uphold the decision of the Bank that the respondent was entitled to only half of pay and allowances as subsistence allowance during the entire period of suspension.